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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 THE WESTERN AND SOUTHERN LIFE
13 INSURANCE COMPANY, WESTERN-
14 SOUTHERN LIFE ASSURANCE COMPANY,
15 COLUMBUS LIFE INSURANCE COMPANY,
16 INTEGRITY LIFE INSURANCE COMPANY,
17 and FORT WASHINGTON INVESTMENT
18 ADVISORS, INC.

19 Plaintiffs,

20 - v -

21 COUNTRYWIDE FINANCIAL CORP.,
22 COUNTRYWIDE HOME LOANS, INC.,
23 COUNTRYWIDE CAPITAL MARKETS, LLC,
24 COUNTRYWIDE SECURITIES CORP.,
25 CWALT, INC., CWABS, INC., CWMBS, INC.,
26 CWHEQ, INC., BANK OF AMERICA CORP.,
27 BANK OF AMERICA, N.A., BAC HOME
LOANS SERVICING, LP, NB HOLDINGS
CORP., ANGELO MOZILO, DAVID SAMBOL,
ERIC SIERACKI, RANJIT KRIPALANI,
STANFORD KURLAND, DAVID A.
SPECTOR, N. JOSHUA ADLER, and
JENNIFER SANDEFUR,

Defendants.

Case No. 2:11-cv-07166
Judge Pfaelzer

AMENDED COMPLAINT

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1 Plaintiffs The Western and Southern Life Insurance Company,
2 Western-Southern Life Assurance Company, Columbus Life Insurance
3 Company, Integrity Life Insurance Company, and Fort Washington
4 Investment Advisors, Inc. (collectively, “Western & Southern”) by and
5 through their attorneys, bring this action against Countrywide Financial
6 Corporation (“Countrywide Financial”), Countrywide Home Loans, Inc.
7 (“Countrywide Home Loans”), Countrywide Capital Markets, LLC
8 (“Countrywide Capital Markets”), (successor to Countrywide Capital
9 Markets, Inc.) Countrywide Securities Corporation (“Countrywide
10 Securities”), and CWALT, Inc. (“CWALT”), CWABS, Inc. (“CWABS”),
11 CWHEQ, Inc. (“CWHEQ”), and CWMBS, Inc. (“CWMBS”) (all
12 collectively, “Countrywide” or the “Countrywide Defendants”); Angelo
13 Mozilo, David Sambol, Eric Sieracki, Ranjit Kripalani, Stanford Kurland,
14 David A. Spector, N. Joshua Adler, and Jennifer Sandefur (the “Officer
15 Defendants”); and Bank of America Corporation (“Bank of America”), Bank
16 of America, N.A., BAC Home Loans Servicing, LP (“BAC Servicing”), and
17 NB Holdings Corporation (collectively, the “Bank of America Defendants”),
18 and allege as follows:

19 NATURE OF ACTION

20 1. This action arises out of the sale to Western & Southern of
21 certain residential mortgage-backed securities (the “Certificates”). The
22 Certificates were sold pursuant to offering materials (as more fully described
23 below) that contained untrue statements and omissions of material facts in
24 violation of Sections 1707.41, 1707.43, 1707.44 and 2923.32 of the Ohio
25 Revised Code, the federal securities laws, and common law prohibitions
26 against fraud and negligent misrepresentation.
27

1 2. Four of the five Western & Southern plaintiffs are mutual
2 insurance companies based in Cincinnati, Ohio. Like other mutual insurance
3 companies, they are owned by their policyholders and are subject to state
4 insurance regulations including capital requirements that effectively limit the
5 types of investments they can hold. Accordingly, Western & Southern
6 generally only purchased from Countrywide senior "Class A" Certificates
7 rated triple-A or the equivalent, seeking a stable stream of interest income.
8 These investments were managed by a relatively small staff of portfolio
9 managers and accountants located in Ohio.

10 3. From 2000-2003, Countrywide rose to prominence as a
11 mortgage lender originating hundreds of billions of dollars worth of loans
12 annually and securitizing them for sale to investors. Business expanded so
13 rapidly that Countrywide's founder and CEO, Defendant Angelo Mozilo,
14 stated publicly that by 2006 Countrywide would be the Nation's "dominant"
15 home-mortgage lender. By 2004, however, it became apparent that
16 Countrywide would be unable to reach its lofty goals if it limited itself to
17 lending to borrowers who qualified under prudent loan underwriting
18 standards.

19 4. In order to fuel Countrywide's growth and amass vast riches for
20 themselves, Mozilo, the other Officer Defendants and certain unnamed co-
21 conspirators described herein embarked on a massive fraud that is largely
22 responsible for the Nation's enduring financial crisis and for the financial
23 ruin of countless individuals.

24 5. Mozilo and his lieutenants directed Countrywide's principal
25 loan originator, Countrywide Home Loans, to approve any loan that could be
26 offloaded onto investors such as Western & Southern, without regard to
27 whether the loan complied with Countrywide's already lax underwriting

1 standards. As Countrywide's CFO, Defendant David Sambol, stated in a
2 February 13, 2005 email, "we should be willing to price virtually any loan
3 that we reasonably believe we can sell/securitize without losing money, even
4 if other lenders can't or won't do the deal."

5 6. Countrywide Home Loans' underwriters or third party
6 mortgage brokers that had been tapped to fill the Countrywide pipeline
7 canvassed the market for borrowers most vulnerable to slick sales practices
8 and the illusion that achieving home ownership was as easy as agreeing to a
9 mortgage loan that they did not understand.

10 7. It was often obvious that borrowers targeted by Countrywide
11 could not repay the loans Countrywide sought to extend to them. In those
12 cases, Countrywide employees many times forged documents to create the
13 appearance that the borrower qualified for the loan. Countrywide employees
14 who observed fraudulent underwriting practices and reported them were
15 summarily fired.

16 8. Countrywide, the Officer Defendants, and others participating
17 in the scheme (as described herein) never intended to allow the most toxic
18 loans originated by Countrywide Home Loans to remain on Countrywide's
19 balance sheet. Instead, these mortgage loans were sold to investors such as
20 Western & Southern.

21 9. In marketing the Certificates to Western & Southern,
22 Countrywide and the Certificate underwriters represented that the loans
23 underlying the securities were underwritten in accordance with prudent
24 standards that ensured only qualified borrowers were granted loans, that
25 borrowers could repay the underlying loans, and that mortgaged properties
26 provided adequate collateral for corresponding loans. Countrywide further
27 represented that the underlying mortgage loans had been validly assigned to

1 the Trusts that issued the Certificates, and that the Trusts, acting through
2 loan servicers or the trustees, would have the ability to foreclose in the event
3 of borrower default.

4 10. The loans backing the Certificates deviated dramatically from
5 what was represented to Western & Southern. To generate an ever-growing
6 volume of loans to securitize and sell to investors, Countrywide abandoned
7 all semblance of underwriting guidelines, regularly originating or purchasing
8 loans issued to borrowers regardless of ability to repay or collateral value.
9 Moreover, Defendants did not properly assign many of the mortgages
10 underlying the Certificates, nor did they properly transfer notes and loan
11 files to the relevant Trusts.

12 11. Virtually all of the Certificates acquired by Western & Southern
13 were triple-A rated at the time of purchase. Now most are “junk” bonds that
14 do not qualify for any investment grade rating. They are “junk.” In ten of
15 the 32 securitizations in this action, well over 20% of the underlying loans
16 have defaulted, been foreclosed upon or are seriously delinquent. In seven
17 securitizations, over 30% of the loans have defaulted, been foreclosed upon
18 or are seriously delinquent. Under the Ohio Securities Act, the Ohio Corrupt
19 Activities Act, the federal securities laws and common law, Western &
20 Southern is entitled to rescind its purchase of these securities and to obtain
21 damages for the full amount of its losses.

22 12. The Certificates are complex structured financial investments
23 backed by thousands of mortgage loans. They are difficult to accurately
24 analyze and value. From its purchase of its Certificates through today,
25 Western & Southern has diligently analyzed expected cash flows for
26 valuation, regulatory and accounting purposes. As set forth herein, through
27 at least June 2009, Western & Southern’s analytical efforts were

1 continuously frustrated by the provision of false and fraudulent loan tape
2 data by the Countrywide Defendants and their successors. As a regulated,
3 “buy and hold” investor in triple-A certificates, Western & Southern was
4 more concerned about possible impairment of the cash flows due under the
5 Certificates than fluctuations in market price. As such, and as set forth
6 more fully below, Western & Southern did not know and could not have
7 known of its claims prior to June 2009.

8 13. The allegations set forth in this Amended Complaint are the
9 result of an exhaustive investigation by counsel for Western & Southern
10 including a review of documents in Western & Southern’s files, public
11 filings relating to the Certificates and Countrywide’s financial operations,
12 testimony from numerous former Countrywide employees and other publicly
13 available reports concerning Countrywide’s misconduct.

14 14. Counsel for Western & Southern has also engaged in a number
15 of interviews of witnesses or their attorneys, including of Countrywide
16 borrowers who were similarly victims of Countrywide’s fraudulent schemes
17 and individuals familiar with Countrywide’s securitization practices.
18 Western & Southern engaged in discussions with counsel for other parties
19 who have sued Countrywide including parties that have conducted their own
20 reviews of Countrywide loan files described below to the extent that such
21 parties were able to share non-confidential information concerning the
22 methodologies employed and their findings. Western & Southern also
23 conducted its own review of Countrywide loan or foreclosure files and
24 internal Countrywide documents made public in connection with
25 investigations by federal law enforcement or regulatory agencies.
26
27

PARTIES

I. Plaintiffs

15. Plaintiff The Western and Southern Life Insurance Company is an insurance company formed under the laws of, and domiciled in, the State of Ohio, with its principal place of business in Cincinnati, Ohio. It sells life insurance and annuity products.

16. Plaintiff Western-Southern Life Assurance Company is an insurance company formed under the laws of, and domiciled in, the State of Ohio, with its principal place of business in Cincinnati, Ohio. It sells life insurance and annuity products.

17. Plaintiff Columbus Life Insurance Company is an insurance company formed under the laws of, and domiciled in, the State of Ohio, with its principal place of business in Cincinnati, Ohio. It sells life, accident and health insurance and annuity products.

18. Plaintiff Integrity Life Insurance Company is an insurance company formed under the laws of, and domiciled in, the State of Ohio, with its principal place of business in Cincinnati, Ohio. It sells life, accident and health insurance and annuity products.

19. Fort Washington Investment Advisors, Inc. is a registered investment advisor formed under the laws of the State of Ohio, with its principal place of business in Cincinnati, Ohio. Fort Washington Investment Advisors is bringing this action on behalf of Fort Washington Active Fixed Income LLC, a Delaware limited liability company with its principal place of business in Cincinnati, Ohio.

II. Countrywide Defendants

20. Defendant Countrywide Financial is a corporation organized under the laws of the State of Delaware with its principal executive offices at

1 4500 Park Granada, Calabasas, California. Pursuant to a merger completed
2 on July 1, 2008, Countrywide Financial was merged into and is now part of
3 Defendant Bank of America.

4 21. Defendant Countrywide Home Loans, a wholly-owned
5 subsidiary of Countrywide Financial, is a corporation organized under the
6 laws of the State of New York with its principal place of business at 4500
7 Park Granada, Calabasas, California. Countrywide Home Loans is now part
8 of Defendant Bank of America and operates under the trade name "Bank of
9 America Home Loans."

10 22. Defendant Countrywide Capital Markets, a wholly-owned
11 subsidiary of Countrywide Financial, is a corporation organized under the
12 laws of the State of California with its principal place of business at 4500
13 Park Granada, Calabasas, California. Countrywide Capital Markets (now
14 part of Bank of America) operates through its two main wholly-owned
15 subsidiaries, Defendant Countrywide Securities Corporation and
16 Countrywide Servicing Exchange.

17 23. Defendant Countrywide Securities is a corporation organized
18 under the laws of the State of Delaware with its principal place of business
19 at 4500 Park Granada, Calabasas, California. Countrywide Securities is now
20 part of Defendant Bank of America.

21 24. Defendant CWALT is a Delaware corporation and a limited
22 purpose subsidiary of Countrywide Financial Corporation with its principal
23 place of business at 4500 Park Granada, Calabasas, California. CWALT
24 was the Depositor for certain of the Offerings in which Western & Southern
25 invested, the Registrant for certain Registration Statements filed with the
26 SEC, and an issuer of certain mortgage-backed Certificates purchased by
27 Western & Southern.

1 25. Defendant CWABS is a Delaware corporation and a limited
2 purpose subsidiary of Countrywide Financial Corporation with its principal
3 place of business at 4500 Park Granada, Calabasas, California. CWABS
4 was the Depositor for certain of the Offerings in which Western & Southern
5 invested, the Registrant for certain Registration Statements filed with the
6 SEC, and an issuer of certain mortgage-backed Certificates purchased by
7 Western & Southern.

8 26. Defendant CWHEQ is a Delaware corporation and a limited
9 purpose subsidiary of Countrywide Financial Corporation with its principal
10 place of business at 4500 Park Granada, Calabasas, California. CWHEQ
11 was the Depositor for certain of the Offerings in which Western & Southern
12 invested, the Registrant for certain Registration Statements filed with the
13 SEC, and an issuer of certain mortgage-backed Certificates purchased by
14 Western & Southern.

15 27. Defendant CWMBS is a Delaware corporation and a limited
16 purpose subsidiary of Countrywide Financial Corporation with its principal
17 place of business at 4500 Park Granada, Calabasas, California. CWMBS
18 was the Depositor for certain of the Offerings in which Western & Southern
19 invested, the Registrant for certain Registration Statements filed with the
20 SEC, and an issuer of certain mortgage-backed Certificates purchased by
21 Western & Southern.

22 **III. Officer Defendants**

23 28. Defendant Angelo Mozilo co-founded Countrywide and served
24 on its Board of Directors from 1969 to July 1, 2008. Mozilo also served as
25 Countrywide Financial's Chairman starting in March 1999 and in various
26 other executive positions since Countrywide Financial's inception, including
27 President from March 2000 through December 2003, and Chief Executive

1 Officer from February 1998 to July 1, 2008. He was a member of
2 Countrywide Financial's Executive Strategy Committee, which was
3 responsible for establishing and evaluating Countrywide's overall strategic
4 direction and governing its annual planning process. Mozilo also served on
5 Countrywide Financial's Credit Committee and Finance Committee and, as
6 CEO and Chairman of the Board, directly oversaw the Ethics and Asset
7 Liability Committees. Mozilo resigned from all of the above positions on
8 July 1, 2008. Mozilo resides in Thousand Oaks, California.

9 29. Defendant David Sambol joined Countrywide Financial in
10 1985. Sambol held numerous key executive positions at Countrywide.
11 From 1994 to 2003, Sambol was a Managing Director and served as
12 Countrywide Financial's Senior Managing Director and Chief of Production
13 for its loan sector. From 2004 to 2006, Sambol was President and COO of
14 Countrywide Home Loans, where he led all operations and had oversight
15 responsibility for the company.

16 30. From 2004 to 2006, Sambol served as Countrywide Financial's
17 Executive Managing Director for Business Segment Operations, heading up
18 all revenue-generating operations at Countrywide Financial, as well as the
19 corporate operational and support units comprised of Administration,
20 Marketing and Corporate Communications, and Enterprise Operations and
21 Technology. From September 2006 through his retirement in mid-2008,
22 Sambol was Countrywide Financial's President and Chief Operating Officer.
23 Beginning in 2007, Sambol was CEO of Countrywide Home Loans and a
24 member of Countrywide Financial's Board of Directors. Beginning in 2007,
25 Sambol also was CEO and President of CWHEQ and a member of its Board
26 of Directors. Sambol resides in Hidden Hills, California.

1 31. During his tenure at Countrywide, Sambol was also a member
2 of several Countrywide Financial committees, including the Executive
3 Strategy Committee, the Asset/Liability Committee, the Finance Committee,
4 the Audit and Ethics Committee, and the Committee to Set Loan Loss
5 Allowance.

6 32. Defendant Eric Sieracki served as Countrywide Financial's
7 Executive Managing Director and Chief Financial Officer from April 2005
8 through the 2008 merger with Bank of America. Prior to his appointment as
9 CFO, Sieracki occupied other high-level positions in various Countrywide
10 entities, including with CWALT, CWABS, CWHEQ, and CWMBS.
11 Sieracki signed the Registration Statements for the following securitizations:
12 CWALT 2005-46CB, CWALT 2005-47CB, CWALT 2005-49CB, CWALT
13 2005-54CB, CWALT 2006-14CB, CWALT 2006-14CB, CWALT 2006-
14 7CB, CWALT 2007-15CB, CWALT 2007-16CB, CWALT 2007-17CB,
15 CWALT 2007-21CB, CWALT 2007-5CB, CWHL 2005-24, CWHL 2005-
16 25, CWHL 2006-21, CWHL 2007-14, CWHL 2007-15, CWHL 2007-5,
17 CWL 2006-S8, CWL 2006-S9, CWL 2007-11, CWL 2007-4, CWL 2007-
18 S1, and CWL 2007-S2. Sieracki resides in Lake Sherwood, California.

19 33. Defendant Ranjit Kripalani joined Countrywide Financial and
20 its subsidiary Countrywide Securities in 1998, as Countrywide Financial's
21 Executive Vice President, and Countrywide Securities' National Sales
22 Manager. He occupied numerous high-level positions across various
23 Countrywide entities, including CWALT, CWABS, CWHEQ and CWMBS.
24 Kripalani signed the Registration Statements for the following
25 securitizations: CWALT 2007-15CB, CWALT 2007-16CB, CWALT 2007-
26 17CB, CWALT 2007-21CB, CWHL 2007-14, CWHL 2007-15, and CWL
27 2007-11. Kripalani resides in Manhattan Beach, California.

1 34. Defendant Stanford Kurland was President and COO of
2 Countrywide Financial from 1988 until September 7, 2006. He served in
3 numerous high-level positions across Countrywide. At all relevant times up
4 to his September 2006 departure, Kurland was also the CEO, President and
5 Chairman of the Board of CWABS. He was also Chairman of the Board,
6 President, and CEO of CWALT, CWABS, CWHEQ, and CWMBS.
7 Kurland signed the registration statements for the following securitizations:
8 CWALT 2005-10CB, CWALT 2005-13CB, CWALT 2005-20CB, CWALT
9 2005-26CB, CWALT 2005-28CB, CWALT 2005-30CB, CWALT 2005-
10 46CB, CWALT 2005-47CB, CWALT 2005-49CB, CWALT 2005-54CB,
11 CWALT 2005-J1, CWALT 2006-14CB, CWALT 2006-14CB, CWALT
12 2006-7CB, CWALT 2007-5CB, CWHL 2005-24, CWHL 2005-25, CWHL
13 2005-J2, CWHL 2006-21, CWHL 2007-5, CWL 2006-S8, CWL 2006-S9,
14 CWL 2007-4, CWL 2007-S1, and CWL 2007-S2. Kurland resides in
15 Hidden Hills, California and is employed by PennyMac, a mortgage
16 company in Calabasas, California, that invests in distressed mortgages.

17 35. Defendant David A. Spector joined Countrywide in 1990 and
18 served as its Executive Vice President of Secondary Markets. He was
19 promoted to Managing Director in 2001 and served as Senior Managing
20 Director of Secondary Marketing at Countrywide Financial from 2004 to
21 2006. He was also a member of the Board of Directors for CWALT,
22 CWABS, CWHEQ, and CWMBS. Spector signed the Registration
23 Statements for the following securitizations: CWALT 2005-10CB, CWALT
24 2005-13CB, CWALT 2005-20CB, CWALT 2005-26CB, CWALT 2005-
25 28CB, CWALT 2005-30CB, CWALT 2005-46CB, CWALT 2005-47CB,
26 CWALT 2005-49CB, CWALT 2005-54CB, CWALT 2005-J1, CWALT
27 2006-14CB, CWALT 2006-14CB, CWALT 2006-7CB, CWALT 2007-5CB,

1 CWHL 2005-24, CWHL 2005-25, CWHL 2005-J2, CWHL 2006-21,
2 CWHL 2007-5, CWL 2006-S8, CWL 2006-S9, CWL 2007-4, CWL 2007-
3 S1, and CWL 2007-S2. Spector resides in Martinez, California. Like
4 Kurland, Spector is now employed by PennyMac.

5 36. Defendant N. Joshua Adler served as President, CEO, and was
6 a member of the Board of Directors for CWALT, CWABS, CWMBS, and
7 CWHEQ. Adler signed the Registration Statements for the following
8 securitizations: CWALT 2007-15CB, CWALT 2007-16CB, CWALT 2007-
9 17CB, CWALT 2007-21CB, CWHL 2007-14, CWHL 2007-15, and CWL
10 2007-11. Adler resides in Calabasas, California.

11 37. Defendant Jennifer Sandefur joined Countrywide Financial in
12 1994 as Vice President and Assistant Treasurer and was shortly promoted to
13 Treasurer of Countrywide Home Loans. She served as Senior Managing
14 Director and Treasurer of Countrywide Financial at the time of her departure
15 in 2008. She also held high-level positions with CWALT, CWABS,
16 CWHEQ, and CWMBS. Sandefur signed the Registration Statement for the
17 following securitizations: CWALT 2007-15CB, CWALT 2007-16CB,
18 CWALT 2007-17CB, CWALT 2007-21CB, CWHL 2007-14, CWHL 2007-
19 15, and CWL 2007-11. Sandefur resides in Somis, California.

20 **IV. Bank of America Defendants**

21 38. Defendant Bank of America Corporation is a Delaware
22 corporation with its principal executive offices at 100 North Tryon Street,
23 Charlotte, North Carolina. Defendants Countrywide Financial, Countrywide
24 Home Loans, Countrywide Capital Markets, and Countrywide Securities all
25 became part of Bank of America following the merger of Countrywide
26 Financial into Bank of America on July 1, 2008.

39. Defendant Bank of America, N.A. is a federally chartered bank regulated by the Office of the Comptroller of the Currency, Department of the Treasury (the “OCC”). Bank of America, N.A. is sued in its capacity as successor to Countrywide Bank, FSB. In February of 2009 Countrywide Bank, FSB, filed an application to become a National Association, and in April of 2009, Countrywide Bank, NA was merged into Bank of America, N.A. All allegations in this Amended Complaint made against Countrywide Bank are asserted against Bank of America, N.A. as successor to Countrywide Bank, FSB and/or Countrywide Bank, N.A. (“Countrywide Bank”).

40. Defendant BAC Servicing is a limited partnership and subsidiary of Bank of America with its principal executive offices at 4500 Park Granada, Calabasas, CA. BAC Servicing is identified in mortgage contracts and other legal documents as “BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP,” as it was formerly known as Countrywide Home Loans Servicing, LP, the Countrywide subsidiary responsible for servicing Countrywide mortgage loans.

41. Defendant NB Holdings Corporation is a Delaware corporation. NB Holdings Corporation is one of the shell entities used to effectuate the Bank of America-Countrywide merger, and is a successor to Defendant Countrywide Home Loans. On July 3, 2008, Countrywide Home Loans completed the sale of substantially all of its assets to NB Holdings Corporation, a wholly-owned subsidiary of Bank of America.

V. The Non-Party Trusts

42. The Certificates for each securitization relevant to this action were issued by a trust. The issuing trusts (collectively, the “Trusts”) are identified in Exhibit A along with other details regarding Western &

1 Southern's purchases. The Trusts are common-law trusts formed under the
2 laws of the State of New York.

3 43. The Trusts are managed by a trustee. The trustee for all
4 Certificates purchased by Western & Southern is The Bank of New York
5 Mellon ("BNY"), a New York banking corporation. The 32 securitization
6 Trusts involved in this complaint are: Alternative Loan Trust 2005-10CB
7 ("CWALT 2005-10CB"), Alternative Loan Trust 2005-13CB ("CWALT
8 2005-13CB"), Alternative Loan Trust 2005-20CB ("CWALT 2005-20CB"),
9 Alternative Loan Trust 2005-26CB ("CWALT 2005-26CB"), Alternative
10 Loan Trust 2005-28CB ("CWALT 2005-28CB"), Alternative Loan Trust
11 2005-30CB ("CWALT 2005-30CB"), Alternative Loan Trust 2005-46CB
12 ("CWALT 2005-46CB"), Alternative Loan Trust 2005-47CB ("CWALT
13 2005-47CB"), Alternative Loan Trust 2005-49CB ("CWALT 2005-49CB"),
14 Alternative Loan Trust 2005-54CB ("CWALT 2005-54CB"), Alternative
15 Loan Trust 2005-J1 ("CWALT 2005-J1"), Alternative Loan Trust 2006-7CB
16 ("CWALT 2006-7CB"), Alternative Loan Trust 2006-14CB ("CWALT
17 2006-14CB"), Alternative Loan Trust 2006-39CB ("CWALT 2006-39CB"),
18 Alternative Loan Trust 2007-5CB ("CWALT 2007-5CB"), Alternative Loan
19 Trust 2007-15CB ("CWALT 2007-15CB"), Alternative Loan Trust 2007-
20 16CB ("CWALT 2007-16CB"), Alternative Loan Trust 2007-17CB
21 ("CWALT 2007-17CB"), Alternative Loan Trust 2007-21CB ("CWALT
22 2007-21CB"), CHL Mortgage Pass-Through Trust 2005-24 ("CWHL 2005-
23 24"), CHL Mortgage Pass-Through Trust 2005-25 ("CWHL 2005-25"),
24 CHL Mortgage Pass-Through Trust 2005-J2 ("CWHL 2005-J2"), CHL
25 Mortgage Pass-Through Trust 2006-21 ("CWHL 2006-21"), CHL Mortgage
26 Pass-Through Trust 2007-5 ("CWHL 2007-5"), CHL Mortgage Pass-
27 Through Trust 2007-14 ("CWHL 2007-14"), CHL Mortgage Pass-Through

1 Trust 2007-15 (“CWL 2007-15”), CWHEQ Home Equity Loan Trust
2 2006-S8 (“CWL 2006-S8”), CWHEQ Home Equity Loan Trust 2006-S9
3 (“CWL 2006-S9”), CWABS Asset-Backed Certificates Trust 2007-4 (“CWL
4 2007-4”), CWABS Asset-Backed Certificates Trust 2007-11 (“CWL 2007-
5 11”), CWHEQ Home Equity Loan Trust 2007-S1 (“CWL 2007-S1”), and
6 CWHEQ Home Equity Loan Trust 2006-S2 (“CWL 2007-S2”).

7 44. At all relevant times, Defendants committed the acts, caused or
8 directed others to commit the acts, or permitted others to commit the acts
9 alleged in this Complaint. Any allegations about acts of corporate
10 Defendants means that those acts were committed through their officers,
11 directors, employees, agents, and/or representatives while those individuals
12 were acting within the actual or implied scope of their authority.

13 **JURISDICTION AND VENUE**

14 45. This action was filed in the Southern District of Ohio and
15 subsequently transferred to the Central District of California for pretrial
16 purposes only by order of the Judicial Panel for Multidistrict Litigation. The
17 Honorable S. Arthur Spiegel of the Southern District of Ohio denied
18 Defendants’ motion to transfer the trial of this action to the Central District
19 of California.

20 46. This Court has jurisdiction pursuant to 28 U.S.C. § 1331. The
21 federal claims asserted herein arise under Section 10(b) of the Securities and
22 Exchange Act of 1934, 15 U.S.C. § 78j(b); Rule 10b-5 promulgated
23 thereunder, 17 C.F.R. § 240.10b-5; Section 20(a) of the 1934 Act, 15 U.S.C.
24 § 78t(a); 28 U.S.C. § 1337; and Section 27 of the 1934 Act, 15 U.S.C.
25 §78aa. The federal claims asserted herein also arise under Sections 11,
26 12(a)(2), and 15 of the Securities Act of 1933, 15 U.S.C. §§ 77k, 771(a)(2),
27

1 and 770; Section 22 of the 1933 Act, 15 U.S.C. § 77v; and 28 U.S.C. §
2 1337.

3 47. This Court has supplemental jurisdiction over Western &
4 Southern's state-law claims pursuant to 28 U.S.C. § 1367.

5 48. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)
6 and Section 27 of the 1934 Act, 15 U.S.C. § 78aa.

7 **SUBSTANTIVE ALLEGATIONS**

8 **I. RESIDENTIAL MORTGAGE-BACKED SECURITIES**

9 49. In the 1980s and 1990s, mortgage originators followed a
10 traditional business model whereby they either held to maturity the loans
11 they had provided to borrowers, or sold the loans to certain government-
12 sponsored entities, mainly the Federal National Mortgage Association
13 ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie
14 Mac").

15 50. Loans held by originators were typically conservative, first-lien
16 loans to prime borrowers. Originators would profit if a borrower made
17 timely interest and principal payments, but would lose if the borrower
18 defaulted and the property value was less than the loan balance. As a result,
19 originators had good reason to carefully establish the creditworthiness of
20 each borrower and the true value of each underlying property before issuing
21 a mortgage loan.

22 51. Loans sold to Fannie Mae and Freddie Mac could not exceed
23 certain maximum amounts, and had to meet specific guidelines on
24 documentation, loan servicing and the like. These so-called "conforming"
25 loans are the loans with the historically lowest rates of delinquency and
26 default. Mortgage loans that exceed agency maximums or otherwise do not
27 meet the agency guidelines are known as "non-conforming" loans.

1 52. In the 1980s and 1990s, Fannie Mae and Freddie Mac sold
2 securities – known as residential mortgage-backed securities (or “RMBS”) –
3 backed by loans purchased from mortgage originators. These early
4 mortgage-backed securities were considered very low-risk investments,
5 because the underlying loans conformed to strict regulatory guidelines, and
6 because Fannie Mae and Freddie Mac guaranteed timely payments of
7 principal and interest. Indeed, because the agencies’ guarantees were
8 implicitly, if not explicitly, backed by the federal government, investors
9 regarded RMBS issued by Fannie Mae and Freddie Mac as virtually risk-
10 free.

11 53. In the early 2000s, the demand for securities backed by
12 mortgage loans increased. Private financial institutions stepped in by
13 originating and then securitizing an ever-growing number of non-
14 conforming loans, such as jumbo loans in excess of agency maximum
15 amounts, loans based on reduced documentation, loans issued to less
16 creditworthy borrowers, and loans with adjustable interest rates. By 2001,
17 private financial institutions had issued \$240 billion in face amount of
18 RMBS. By 2006, that amount had increased four-fold to over \$1 trillion.

19 54. During this period, Countrywide dramatically increased its
20 underwriting and issuance of mortgage-backed securities to take advantage
21 of the exploding market and earn substantial revenues by aggressively
22 marketing the securities to investors such as Western & Southern.

23 **II. THE SECURITIZATION PROCESS**

24 55. The process whereby residential mortgage-backed securities are
25 created and sold is known as mortgage securitization. In broad terms,
26 mortgage loans are acquired from mortgage originators and pooled together,
27

1 with securities constituting interests in the cash flow from the mortgage
2 pools then sold to investors.

3 56. The first step is the origination or purchase of mortgage loans
4 by a “sponsor” (or “seller”), and the sale of a pool of such loans by the
5 sponsor to a “depositor,” typically a special-purpose affiliate of the sponsor.

6 57. The depositor then deposits the pool of loans into a trust under
7 a trust agreement that establishes various classes, or “tranches,” of interests
8 in payments made by borrowers on the loans. The trust issues certificates
9 representing interests in these tranches; the certificates are sold to an
10 underwriter (often an affiliate of the sponsor and the depositor); and the
11 underwriter seeks to re-sell the certificates at a profit to investors.

12 58. Each tranche has a different level of purported risk and reward,
13 and, often, a different rating by a nationally recognized credit-rating agency,
14 such as Standard & Poor’s or Moody’s. The most senior tranches generally
15 receive the highest ratings, AAA or AA. Junior tranches offer higher
16 potential returns but are exposed to more risk and have lower credit ratings.
17 Senior tranches are generally entitled to payment in full ahead of junior
18 tranches, and losses on are generally allocated first to junior tranches. This
19 division of cash flows and losses is referred to as the flow of funds or
20 “waterfall.”

21 59. The sponsor and underwriter work with one or more of the
22 credit-rating agencies to ensure that each certificate tranche receives the
23 highest possible rating in order to facilitate the underwriter’s marketing and
24 re-sale to investors.

25 60. Because cash flow from loans in the mortgage pool is the sole
26 source of funds to re-pay holders of a mortgage-backed security, the credit
27 quality of the securities turns on the credit quality of the underlying

1 mortgage pool, which often includes thousands of loans. Detailed
2 information about loan credit quality is contained in loan files developed and
3 maintained by the mortgage originators. For residential mortgage loans,
4 each loan file should normally contain documents such as the borrower's
5 loan application; verification of income, assets, and employment; credit
6 reports; and an appraisal of the mortgaged property that secures the loan and
7 provides the basis for other measures of credit quality, such as loan-to-value
8 ratio and occupancy status. The loan file should also include notes by the
9 person who granted the loan application describing the loan's compliance
10 with underwriting guidelines, and documenting any factors that justified any
11 departure from those standards.

12 61. RMBS investors do not have access to the loan files. Instead,
13 the sponsor, the depositor, and the underwriter are responsible for gathering
14 and verifying information about the documentation and credit quality of
15 loans that are deposited into a mortgage-backed security trust, and then
16 presenting that information to potential investors in registration statements,
17 prospectuses, prospectus supplements, data compilations, and loan tapes
18 (collectively, "Offering Materials"). This verification and disclosure process
19 is a critical safeguard for investors, and a fundamental legal obligation of the
20 sponsor, the depositor, and the underwriter.

21 **III. COUNTRYWIDE'S QUEST FOR MARKET DOMINANCE**

22 62. Prior to 2000, Countrywide originated mainly conforming
23 mortgage loans that could be sold to Fannie Mae and Freddie Mac.
24 Beginning in 2000, Countrywide entered the so called "subprime" mortgage
25 market in earnest, originating loans that did not comply with Fannie Mae
26 and Freddie Mac guidelines.

1 63. Over the next few years, Countrywide was able to increase its
2 market share of both conforming loans and non-conforming loans. In 2001,
3 2002 and 2003, approximately half of Countrywide's originations were non-
4 conforming, sub-prime loans.

5 64. In 2004, demand for mortgage loans decreased and virtually
6 every other originator besides Countrywide originated fewer loans than in
7 prior years. Countrywide to the contrary increased its loan origination by
8 systemically abandoning its underwriting standards. Countrywide's 2004
9 market share increased subprime loans to 72% of Countrywide's mortgage
10 portfolio. Countrywide maintained its sub-prime originations at similar
11 levels throughout 2005 and 2006.

12 65. As part of its quest for larger and larger loan volume,
13 Countrywide began a race to the bottom of underwriting standards. A
14 component of this effort was a "matching strategy" whereby Countrywide
15 would match any loan program offered by a competitor, regardless of the
16 risk involved. This strategy required Countrywide's wholesale disregard of
17 its own underwriting guidelines in favor of blindly approving nearly any
18 kind of loan.

19 66. An integral part of Countrywide's matching strategy was a
20 practice of granting "exceptions" to its underwriting guidelines. Prior to
21 Countrywide's efforts to increase market share, exceptions were typically
22 only granted where sufficient compensating factors offset the underwriting
23 criterion that a given loan had failed. Countrywide, however, began to
24 employ exceptions to gain approval for loans that did not have such
25 compensating factors and that did not otherwise pass muster under the
26 underwriting guidelines.

1 67. As Countrywide's loan volume increased, so did the personnel
2 authorized to grant exceptions. And if a first-level underwriter refused to
3 grant an exception, a salesperson could simply go to that underwriter's
4 superior – and on – to find someone who would. Countrywide also
5 employed a computer system known as the Exception Processing System.
6 That system would approve nearly any borrower, though at an increased cost
7 to the borrower (and eventually the market) depending on the increased risk.
8 Because that system was known within Countrywide to approve almost any
9 borrower, it was nicknamed the "Price Any Loan" system.

10 68. Countrywide typically made four attempts at approving a loan.
11 In the last attempt, the loan was referred to Countrywide's Secondary
12 Markets Structured Lending Desk. At that desk, the sole criterion for
13 determining whether Countrywide would approve a loan was whether the
14 loan could be sold into the secondary market. This practice guaranteed
15 Countrywide the largest volume of loan originations possible without regard
16 for its underwriting guidelines.

17 69. To increase loan volume, Countrywide engaged in a regular
18 practice of predatory lending executed by its internal and independent
19 brokers. Those brokers were given scripts and taught high pressure sales
20 tactics to trick, or sometimes downright lie to, borrowers in order to lull
21 them into accepting a Countrywide loan or refinancing. Those brokers were
22 paid on commissions that increased depending on the loan. A conforming,
23 low-dollar loan would earn some of the lowest commissions, while loans
24 that had high pre-payment penalties or that reset to high interest rates
25 received much higher commissions. In fact, the higher the loan reset rate,
26 the higher the commission the broker was paid. Such loans were often
27

1 confusing and complex, and the brokers themselves sometimes did not
2 understand how they worked.

3 70. Countrywide hid these practices from the market by, among
4 other things, classifying a larger and larger number of loans as prime that
5 were in fact generally considered to be subprime. Countrywide also
6 regularly touted its strict underwriting guidelines and its claim that it could
7 find the best loan for any borrower – claims only now known to be patently
8 untrue.

9 71. Countrywide hid its practices from the market in part so that its
10 directors, officers and executives could enrich themselves through sales of
11 massive amounts of stock. Between 2004 and the end of 2007, insiders sold
12 more than \$850 million of Countrywide stock, and Mozilo himself sold
13 about \$474 million worth of shares during that period. Those sales were
14 made at inflated prices, because the Defendants systematically hid the
15 origination, securitization and servicing fraud in which Countrywide was
16 engaged.

17 72. In October 2006, Countrywide authorized a share repurchase
18 program up to a limit of \$2.5 billion. The market took the program to be a
19 signal that Countrywide's board thought its shares were undervalued. From
20 November 2006 to February 2007, Countrywide's share price thus rose over
21 \$6.50 per share to hit an all-time high of \$45.03 in February 2007. In effect,
22 Countrywide's board supported its stock prices through the repurchase
23 program while it and other insiders dumped their Countrywide shares on the
24 market.

25 73. However, Countrywide could not hide its difficulties forever.
26 By the middle of 2007, Countrywide's stock price began to suffer
27 significantly and rumors began to circle about problems with Countrywide's

1 liquidity. On August 16, 2007, Countrywide had to draw down its full credit
2 facility of \$11.5 billion to stay afloat, and on August 22, 2007, Bank of
3 America purchased \$2 billion worth of nonvoting, convertible preferred
4 stock equal to approximately a 17% share of Countrywide.

5 74. Finally, with Countrywide about to fail, in January 2008, Bank
6 of America announced that it would purchase all of Countrywide for a little
7 over \$4 billion. Through a series of transactions since that announcement,
8 Bank of America is now running what used to be Countrywide's mortgage
9 origination and servicing businesses.

10 **IV. WESTERN & SOUTHERN'S PURCHASES OF** 11 **CERTIFICATES**

12 75. Western & Southern purchased \$447 million of Countrywide
13 Certificates from June 21, 2005 through March 25, 2008. These purchases
14 are each listed individually in Exhibit A to this Amended Complaint.

15 **V. COUNTRYWIDE'S ABANDONMENT OF ITS** 16 **UNDERWRITING GUIDELINES**

17 76. The fundamental basis upon which residential mortgage-backed
18 securities are valued is the borrowers' ability to repay the underlying loans
19 and the adequacy of the collateral for those loans. If the borrowers cannot
20 pay, and the collateral is insufficient, the investors incur losses. For these
21 reasons, the underwriting standards and practices of the mortgage originators
22 that issued the loans backing the Certificates, and the representations in the
23 Offering Materials regarding those standards, are critically important to the
24 value of the securities and to investors' decisions to purchase.

25 **A. Countrywide Falsely Touted Its Underwriting Standards**

26 77. Countrywide represented in the Offering Materials that the
27 loans underlying each securitization were underwritten in accordance with

1 meaningful underwriting standards designed properly to qualify borrowers
2 and ensure the sufficiency of loan collateral. For example, in the Offering
3 Materials for CWALT 2007-16CB, Countrywide told investors:

4 All of the mortgage loans in the issuing entity will have been
5 originated or acquired by Countrywide Home Loans in
6 accordance with its credit, appraisal and underwriting process
7 Countrywide Home Loans' underwriting standards are
8 applied by or on behalf of Countrywide Home Loans to
9 evaluate the prospective borrower's credit standing and
10 repayment ability and the value and adequacy of the mortgaged
11 property as collateral.

12 CWALT 2007-16CB Prospectus Supplement dated June 28, 2007 at S-41.

13 The Offering Materials for each of the securitizations at issue here had
14 similar representations. *See* Ex. B.

15 78. The Offering Materials represented that only borrowers who
16 had the means to repay had received loans. For example, the Offering
17 Materials for CWALT 2007-16CB stated:

18 Under [Countrywide's underwriting] standards, a prospective
19 borrower must generally demonstrate that the ratio of the
20 borrower's monthly housing expenses (including principal and
21 interest on the proposed mortgage loan and, as applicable, the
22 related monthly portion of property taxes, hazard insurance and
23 mortgage insurance) to the borrower's monthly gross income
24 and the ratio of total monthly debt to the monthly gross income
25 (the "debt - to - income" ratios) are within acceptable limits.

26 CWALT 2007-16CB Pro. Supp. S-42. The Offering Materials for each of
27 the securitizations at issue here had similar representations. *See* Ex. B.

1 79. The Offering Materials asserted that all loans were issued in
2 substantial compliance with underwriting standards, and that any deviation
3 from specific criteria was justified by sufficient positive compensating
4 factors and made on a limited case-by-case basis. For example, the Offering
5 Materials for CWALT 2007-16CB told investors: “Exceptions to
6 Countrywide Home Loans' underwriting guidelines may be made if
7 compensating factors are demonstrated by a prospective borrower.”
8 CWALT 2007-16CB Pro. Supp. S-42. The Offering Materials for each of
9 the securitizations at issue here had similar representations. *See* Ex. B.

10 80. The Offering Materials told investors that the loans underlying
11 the certificates had not been adversely selected, that is that Countrywide did
12 not intentionally select poor loans for securitization that it did not want on its
13 balance sheet. For example, the Offering Materials for CWALT 2007-16CB
14 provided:

15 Countrywide Home Loans will represent and warrant to the
16 depositor in the pooling and servicing agreement that the
17 mortgage loans were selected from among the outstanding one-
18 to four-family mortgage loans in Countrywide Home Loans'
19 portfolio as to which the representations and warranties set
20 forth in the pooling and servicing agreement can be made and
21 that the selection was not made in a manner intended to affect
22 the interests of the certificateholders adversely.

23 CWALT 2007-16CB Pro. Supp. S-35. The Offering Materials for each of
24 the securitizations at issue here had similar representations. *See* Ex. B.

25 81. In addition, Countrywide falsely represented the rigor of its
26 underwriting to Western & Southern portfolio managers during marketing
27 “road shows,” industry gatherings, and telephone conversations between

1 2002-2008. For example, in 2006, Western & Southern portfolio managers
2 attended the American Securitization Forum (“ASF”), an industry event at
3 which Countrywide regularly marketed its products. In breakout sessions
4 with Western & Southern, Countrywide assured Western & Southern
5 portfolio managers that Countrywide had controls and processes in place to
6 ensure that underwriting standards were followed and that the loans
7 underlying Countrywide securitizations complied with represented standards
8 for such criteria as owner occupancy, appraisal practices, and loan to value
9 ratios.

10 82. Countrywide represented to Western & Southern that before
11 securitizing a pool of loans, Countrywide would conduct a sampling process
12 to identify and remove from the pool any loan approved in violation of
13 Countrywide’s underwriting guidelines.

14 83. Countrywide made similar statements to Western & Southern
15 during road shows, due diligence meetings, internet-based presentations and
16 in telephone conversations with Western & Southern portfolio managers
17 from 2002-2008. Countrywide also sent Western & Southern presentations
18 touting its due diligence and risk management procedures, and presentations
19 concerning the sensitivity of securitization certificates to variation in several
20 statistical metrics relating to the underlying loans. Countrywide knew that
21 Western & Southern would use the statistical metrics to develop a
22 proprietary model used to perform loan-level analysis to determine the
23 likelihood that Western & Southern would receive the cash flows due under
24 its Countrywide Certificates.

25 84. These representations were false. As set forth below in this
26 Section V, and in Sections III and VI, the mortgage loans underlying the
27 Certificates did not comply with the underwriting standards the Offering

1 Materials described because those standards were systemically ignored. In
2 originating or acquiring the loans, Countrywide regularly ignored borrowers'
3 repayment ability, the adequacy of the collateral securing the loans and the
4 ability to efficiently realize on mortgaged property when loans defaulted.
5 Countrywide also failed to inform investors that it was systematically
6 abusing the "exceptions" process in order to further circumvent its purported
7 underwriting standards.

8 **B. Publicly Available Information Demonstrates That**
9 **Countrywide Defrauded Investors by Systemically**
10 **Abandoning Underwriting Standards**

11 85. The SEC has released documents showing that Countrywide
12 adopted a "matching" strategy whereby it would provide any mortgage
13 product feature offered by a competitor. By mixing and matching the worst
14 features of mortgage products from different competitors, Countrywide's
15 composite product offering pushed the outer limit of already lax
16 underwriting practices.

17 86. This "matching" strategy could only be implemented through
18 abandonment of Countrywide's supposed credit-risk-reducing underwriting
19 procedures. To get around requirements of such procedures, Countrywide
20 set up a system whereby any loan could be approved by way of underwriting
21 "exceptions," and coached borrowers on how to apply for loan products that
22 required little or no income or asset verification. Internal documents show
23 that "exceptions" were involved in upwards of a third of all loans, and were
24 based purely on the desire to increase loan volume (and profits) and not on
25 "compensating factors" as represented in the Offering Materials.
26 Countrywide deliberately offloaded the worst of these loans to
27 securitizations sold to investors such as Western & Southern.

1 87. On August 2, 2005, Officer Defendant Sambol discussed
2 Countrywide's strategy of "cherry picking" loans so that Countrywide would
3 retain less risky loans while the most toxic loans were offloaded on
4 investors. As Sambol wrote to Mozilo, "we need to analyze the
5 securitization implications on what remains if [Countrywide Bank] is only
6 cherry-picking and what remains to be securitized/sold is overly
7 concentrated with higher risk loans."

8 88. Mozilo responded that Countrywide should funnel the more
9 toxic loans to investors through securitizations. According to Mozilo:

10 [T]here is a price we will pay no matter what we do. The
11 difference being that by placing less attractive loans in the
12 secondary market we know exactly the economic price we will
13 pay when the sales settle. By placing, even at 50%, into
14 [Countrywide] Bank we have no idea what economic and
15 reputational losses we will suffer not to say anything about
16 restrictions placed upon us by regulators.

17 89. Countrywide's Chief Risk Officer John McMurray specifically
18 raised concerns about the risks presented by Countrywide's practice of
19 "cherry picking" toxic loans for inclusion in securitizations. As McMurray
20 later testified:

21 Countrywide's bank tended to - on - on some of the key
22 products, tended to select the best loans out of the ones that
23 were originated,' by best - I'm talking about from a credit risk
24 standpoint, so let me clarify that. So as - as those loans are
25 drawn out of the population, what's left to put into the
26 securities were not - are not as good as what you started out
27

1 with, and then that can have an adverse effect on securities
2 performance.

3 90. That Countrywide was “cherry-picking” the loans it would keep
4 for itself was also confirmed by Clifford Rossi, a Countrywide Risk Officer,
5 who testified that the practice of the “bank was to originate and to cherry
6 pick the better quality assets.” This highly material information was never
7 disclosed to investors.

8 91. Countrywide intentionally deviated from its underwriting
9 guidelines. Chief Risk Officer McMurray testified that his credit risk
10 department “would reject proposals for new products but the people in sales
11 nevertheless used the exceptions procedure to achieve the same result.” He
12 was “surprised, angry, and disappointed” when he found out Countrywide
13 had advertising fliers promoting loans that had low credit-score
14 requirements, only required a stated (undocumented) income, and provided
15 100% financing even though his credit risk department had previously
16 rejected those flyers.

17 92. McMurray also testified that he spoke with others in
18 Countrywide, including Sambol, about Countrywide underwriting loans that
19 were prohibited by its underwriting guidelines. Indeed, in a May 22, 2005
20 email, McMurray complained to Sambol that “exceptions are generally done
21 at terms more aggressive than our guidelines Given the expansion in
22 guidelines and the growing likelihood that the real estate market will cool,
23 this seems like an appropriate juncture to revisit our approach to
24 exceptions.”

25 93. Sambol embraced Countrywide’s abandonment of underwriting
26 guidelines, stating in a February 13, 2005 email that “we should be willing
27

1 to price virtually any loan that we reasonably believe we can sell/securitize
2 without losing money, even if other lenders can't or won't do the deal."

3 94. Countrywide business units heeded the call, placing "virtually
4 any loan" that Countrywide thought it could offload on Western & Southern
5 and other investors who were assured by public disclosures that
6 Countrywide followed its underwriting guidelines.

7 95. In 2006, Countrywide internal reviews concluded that one third
8 of all Countrywide loans violated its underwriting guidelines. Frank
9 Aguilera, a Countrywide Managing Director responsible for risk
10 management, reported the "particularly alarming" result that 23% of the
11 subprime loans, which were often included as prime or Alt-A loans in
12 Countrywide's securitizations, were generated as exceptions, even taking
13 into account "all guidelines, published and not published, approved and not
14 yet approved." The exception rate for "80/20" products (which were
15 particularly risky because they required 100% financing) was even higher.
16 Aguilera wrote at the time: "[t]he results speak towards our inability to
17 adequately impose and monitor controls on production operations." Another
18 internal review conducted around the same time concluded that
19 "approximately 40% of the Bank's reduced documentation loans . . . could
20 potentially have income overstated by more than 10% and a significant
21 percent of those loans would have income overstated by 50% or more."

22 96. An internal Countrywide document described the objectives of
23 Countrywide's Exception Processing System to include "[a]pprov[ing]
24 virtually every borrower and loan profile," with "pricing add on" (*i.e.*,
25 additional fees) if necessary to offset the risk. The objectives also included
26 providing "[p]rocess and price exceptions on standard products for high risk
27 borrowers."

1 97. A pay-option ARM is a type of loan in which the borrower can
2 make a payment even less than that required to payoff accruing interest. If
3 the borrower does this too many times, the amount of principal owed is
4 recalculated, resulting in a sudden increase in the minimum payments. In a
5 June 1, 2006 email regarding Pay-Option ARMs, Mozilo warned Sambol
6 and other Countrywide executives that borrowers “are going to experience a
7 payment shock which is going to be difficult if not impossible for them to
8 manage.” In a September 26, 2006 email, Mozilo admitted that with respect
9 to pay-option ARMs “we are flying blind on how these loans will perform”
10 in a stressed environment. Mozilo’s “flying blind” admission extended well
11 beyond pay option ARMs. As Chief Risk Officer McMurray later testified,
12 “I do think you could generalize [this] observation to a much broader set of
13 loans than just pay option.”

14 98. During a March 12, 2007 meeting of Countrywide’s credit risk
15 committee, the risk management department reported that 12% of loans
16 reviewed internally were rated “severely unsatisfactory” or “high risk”
17 because the loans had loan-to-value ratios, debt-to-income ratios or borrower
18 credit scores outside of Countrywide’s already liberal underwriting
19 guidelines.

20 99. In a May 7, 2007 letter to the Office of Thrift Supervision,
21 Countrywide admitted: “Specifically looking at originations in the fourth
22 quarter of 2006, we know that almost 60% of the borrowers who obtained
23 subprime hybrid ARMs [from Countrywide] would not have qualified at the
24 fully indexed rate.” Countrywide also admitted that “almost 25% of the
25 borrowers would not have qualified for any other [Countrywide] product.”

26 100. According to the SEC, on May 29, 2007 Sambol and Sieracki
27 attended a Credit Risk Committee Meeting at which they were informed that

1 “loans continue[d] to be originated outside guidelines,” primarily via the
2 Secondary Structured Lending Desk without “formal guidance or
3 governance surrounding” the approvals. These observations at the May
4 2007 Credit Risk Committee meeting concerned a period in which a large
5 majority of the loans underlying the Certificates were originated.

6 101. In November 2007, Countrywide prepared a “lessons learned”
7 analysis. This included observations from interviews of Countrywide’s
8 employees and culminated in an internal presentation. In this analysis,
9 Countrywide repeatedly admitted that it was singularly focused on market
10 share and its “matching” strategy:

- 11 • ***“We were driven by market share, and wouldn’t say ‘no’***
12 ***(to guideline expansion).”***
- 13 • “Competitiveness and aggressiveness are great, and part of
14 our DNA. However, it can lead to arrogance and lack of
15 friends. There are times when our strengths can turn into
16 our weaknesses.”
- 17 • “The strategies that could have avoided the situation were
18 not very appealing at the time. Do not produce risky loans
19 in the first place: This strategy would have hurt our
20 production franchise and reduced earnings.”
- 21 • ***“Market share, size and dominance were driving***
22 ***themes. . . . [that] [c]reated huge upside in good times, but***
23 ***challenges in today’s environment. Net/net it was probably***
24 ***worth it.”***

25 (Emphasis added).

1 102. Countrywide also fully recognized that the “matching” strategy
2 led to product development far outpacing its risk-assessment procedures and
3 misaligned the incentives of its employees:

- 4 • ***“With riskier products, you need to be exquisite in off-***
5 ***loading the risk. This puts significant pressure on risk***
6 ***management. Our systems never caught up with the risks,***
7 ***or with the pace of change.”***
- 8 • “Risk indicators and internal control systems may not have
9 gotten enough attention in the institutional risk and Board
10 committees.”
- 11 • ***“Not enough people had an incentive to manage risk.”***
- 12 • “Decentralized and local decision making were another
13 characteristic of our model. . . . The downside was fewer
14 risk controls and less focus on risk, as the local decision
15 makers were not directly measured on risk.”
- 16 • “Our wide guidelines were not supported by the proper
17 infrastructure (credit, risk management).”
- 18 • “[W]e did not put meaningful boundaries around the [broad
19 product] strategy, even when our instincts might have
20 suggested that we do so, and we allowed the model to outrun
21 its critical support infrastructure in investment and credit
22 risk management. . . . Our risk management systems were
23 not able to provide enough counterbalance”
- 24 • ***“The focus of production was volume and margin, not***
25 ***credit risk. There was also massive emphasis on share.”***

26 (Emphasis added).
27

1 103. Countrywide's internal analysis of underwriting failures is
2 directly relevant to the Western & Southern Certificates because the analysis
3 admits systemic breakdown during the very time period when loans
4 underlying the Certificates were originated, and when many of the
5 Certificates were issued.

6 **C. Widespread Defaults and Downgrades Confirm That**
7 **Countrywide Abandoned Its Underwriting Standards**

8 104. Even though the Certificates were supposed to be long-term,
9 stable investments, just years after their issuance high percentages of the
10 underlying mortgage loans have defaulted, been foreclosed upon, or are
11 delinquent, resulting in massive losses to the Certificate holders, including
12 Western & Southern. For instance, seven of the Offerings which Western &
13 Southern purchased have loan pools with 30% of their Mortgage Loans in
14 either default or delinquency. Many have even higher than 30% default
15 rates - for instance over 61% of the Mortgage Loans in the current pool are
16 in default or are delinquent for CWL 2007-11. Likewise, over 50% of the
17 Mortgage Loans in the current pool are delinquent for CWL 2007-04. These
18 statistics are more fully set forth in Exhibit C.

19 105. Thirty-three of Western & Southern's thirty-six tranches were
20 rated triple-A or the equivalent. The ratings for each tranche are more fully
21 set forth in Exhibit D. According to the Standard & Poor's website, "An
22 obligation rated 'AAA' has the highest rating assigned by Standard &
23 Poor's. The obligor's capacity to meet its financial commitment on the
24 obligation is extremely strong." Moody's similarly describes its highest
25 rating, Aaa, as meaning that the investment is "judged to be of the highest
26 quality, with minimal credit risk." Historically, a AAA rated security had an
27 expected loss rate of less than .05%.

1 106. The poor performance of the loan pools and the rapid drop in
2 credit ratings of the Certificates have, according to recent data, caused an
3 approximately 31.1% decline in the market values of the Certificates.

4 **D. Loan File Reviews By Countrywide's Insurers and Others**
5 **Reveal A Total Disregard For Underwriting Standards**

6 107. Third parties with access to the complete loan files for certain
7 Countrywide securitizations have performed additional analysis of the
8 mortgage loans underlying Countrywide's offerings. These include, among
9 other monoline insurers, MBIA Insurance Corporation ("MBIA") and
10 Syncora Insurance Company ("Syncora"). Their analyses provide strong
11 evidence that essential characteristics of the loans underlying the Certificates
12 were severely misrepresented, and that the problems in Countrywide's
13 underwriting practices were systemic.

14 108. The MBIA analysis included at least four of the same offerings
15 in which Western & Southern invested: CWL 2006-S8, CWL 2006-S9,
16 CWL 2007-S1 and CWL 2007-S2.

17 109. In its review of approximately 19,000 Countrywide loan files,
18 MBIA found that 91% of the defaulted or delinquent loans in those
19 securitizations contained material deviations from Countrywide's
20 underwriting guidelines. According to the MBIA report, loan applications
21 frequently "(i) lack key documentation, such as verification of borrower
22 assets or income; (ii) include an invalid or incomplete appraisal; (iii)
23 demonstrate fraud by the borrower on the face of the application; or (iv)
24 reflect that any of borrower income, FICO score, debt, DTI [debt-to-
25 income,] or CLTV [combined loan-to-value] ratios, fails to meet stated
26 Countrywide guidelines (without any permissible exception)."
27

1 110. Syncora conducted a similar analysis of defaulted Countrywide
2 loans to determine whether the loans had been originated in accordance with
3 Countrywide representations. Syncora found that 75% of the loans it
4 reviewed “were underwritten in violation of Countrywide’s own lending
5 guidelines, lack any compensating factors that could justify their increased
6 risk, and should never have been made.” The Syncora’s review covered
7 2004 to 2007, a time period in which a large majority of the loans underlying
8 the Certificates were originated.

9 111. The Illinois Attorney General reviewed the sales of loans to
10 Countrywide by an Illinois mortgage broker and found that documentation
11 for vast the majority of the loans included inflated incomes, almost all
12 without the borrowers’ knowledge. This study covered the time period of
13 2004 to 2007, again the same time period during which Countrywide was
14 generating loans underlying the Certificates. Likewise, a review of 100
15 stated-income loans by the Mortgage Asset Research Institute revealed that
16 60% of the income amounts were inflated by more than 50% and that 90%
17 of the loans had inflated income figures of at least 5%. This review also
18 covers the time period of 2004 to 2007.

19 112. Ambac Assurance Corporation, another insurer of Countrywide
20 securitizations, reviewed 6,533 files of defaulted loans. Of those, over 97%
21 had one or more defects in underwriting, including misrepresentations of
22 borrowers’ income, assets, or employment; owner occupancy; appraisals; or
23 other aspects of Countrywide’s underwriting guidelines.

24 113. Mortgage Guaranty Insurance Corporation (“MGIC”) recently
25 disclosed its audit of Countrywide loans in an arbitration demand relating to
26 its insurance policies on Countrywide loans. MGIC has declined coverage
27 for these loans because of loan fraud. In the demand, MGIC seeks to rescind

or otherwise deny coverage for approximately 1,400 Countrywide insurance claims.

114. In its loan files audit, MGIC found pervasive fraud. As the chart below demonstrates, the differences between the truth and what Countrywide claimed are dramatic.

	Countrywide Representation	Reality
Position	Account Executive	Janitor
Income	\$13,494.03/month	\$3,901.58/month
DTI Ratio	37.91%	134.05%
Other	Made \$30,000 downpayment.	Made no down payment.
	Had \$45,000 in Wells Fargo bank account.	No such account existed.
	Property to be primary residence.	Property intended as investment.
Position	Auto body shop employee	Part-time housekeeper
Income	\$6,833/month	Approx. \$1,300/month
DTI Ratio	39%	205.47%
Other	Property to be primary residence.	Property was purchased for sister.
Position	Dairy foreman	Milker
Income	\$10,500/month	\$1,100/month
DTI Ratio	43.26%	403.40%

Other	Property to be primary residence.	Property was purchased for son.
Position	Sales executive	None
Income	\$8,700/month	None
DTI Ratio	35.17%	Infinitely high
Other	Property to be primary residence.	Property to be rented to daughter.
	No other mortgages held at time of loan.	Two undisclosed mortgages on other property.
Position	Owner of production company	None
Income	\$17,661/month	None
DTI Ratio	16.55%	Infinitely high
Other	Made \$70,000 down payment on property and Had \$79,458 Washington Mutual bank account.	Made no down payment and no such account existed.

E. Countrywide and Bank of America Have Paid Billions to Resolve Claims That They Securitized Loans While Ignoring Underwriting Standards

115. In January 2011, the Congressional Financial Crisis Inquiry Commission (“FCIC”) made public a review of Countrywide loans by Fannie Mae and Freddie Mac that had uncovered billions of dollars of Countrywide loans that failed to comply with applicable underwriting

1 guidelines. According to the FCIC, Countrywide was forced by Freddie
2 Mac to repurchase \$1.9 billion of loans that did not comply with applicable
3 underwriting guidelines in 2009 and 2010. Countrywide was forced to
4 repurchase over \$6 billion of loans it sold to Fannie Mae.

5 116. The FCIC Report states that Fannie Mae identified
6 Countrywide as one of the top originators of fraudulent mortgage loans.
7 According to the FCIC:

8 Fannie Mae's detection of fraud increased steadily during the
9 housing bubble and accelerated in late 2006, according to
10 William Brewster, the current director of the company's
11 mortgage fraud program. He said that, seeing evidence of
12 fraud, Fannie demanded that lenders such as Bank of America,
13 Countrywide, Citigroup, and JP Morgan Chase repurchase
14 about \$550 million in mortgages in 2008 and \$650 million in
15 2009. "Lax or practically non-existent government oversight
16 created what criminologists have labeled 'crime-facilitative
17 environments,' where crime could thrive," said Henry N.
18 Pontell, a professor of criminology at the University of
19 California, Irvine, in testimony to the Commission.

20 117. The director of Fannie Mae's mortgage fraud program, William
21 Brewster, testified that Countrywide was one of the top five loan originators
22 found by Fannie Mae to be fraudulent.

23 118. On June 28, 2011, Bank of America announced an \$8.5 billion
24 proposed settlement of so called "put back" claims and servicing problems
25 with BNY as trustee for 530 Countrywide-sponsored securitizations.
26
27

F. The HUD Audit

119. On September 30, 2011, the Inspector General for the Department of Housing and Urban Development (“HUD”) issued an audit report of loans originated by Countrywide. The HUD found that Countrywide did not comply with regulations applicable to underwriting FHA-insured loans in Ohio and five other states.

120. According to the HUD Inspector General, for many of those loans:

Countrywide did not properly verify, analyze, or support borrowers’ employment and income, source of funds to close, liabilities and credit information This noncompliance occurred because Countrywide’s underwriters did not exercise due diligence in underwriting the loans. As a result of the improperly underwritten loans, HUD paid more than \$1 million in claims and incurred losses totaling more the \$720,000 on the sales of associated properties for the seven loans.

HUD Audit Report on Countrywide, September 30, 2011, at 2.

121. As a result, the HUD Inspector General recommended action against Countrywide and Bank of America for falsely certifying Countrywide performed due diligence on the loans when it had not.

G. Countrywide and Bank of America Conspired with Certificate Underwriters

122. Countrywide often tapped Wall Street financial institutions to underwrite its fraudulent securitizations. These financial institutions were fully aware that the loans underlying Countrywide’s MBS were misrepresented in the Offering Materials, but they sold the Certificates to investors such as Western & Southern anyway. Countrywide paid these

1 financial institutions many millions of dollars in underwriting and other fees
2 and benefited from such institutions' access to a broad base of institutional
3 investors.

4 123. For example, Western & Southern acquired CWALT 2005-
5 54CB, CWALT 20067CB, and CWALT 2007-17CB Certificates from
6 Credit Suisse First Boston LLC (since renamed Credit Suisse Securities
7 LLC) ("Credit Suisse Securities") and CWALT 2006-14CB and CWALT
8 2007-21CB Certificates from Deutsche Bank Securities Inc. ("Deutsche
9 Bank"). The January 2011 FCIC report stated that Credit Suisse and
10 Deutsche Bank routinely waived mortgage loans into securitizations while
11 knowing that the loans did not comply with applicable underwriting
12 guidelines.

13 124. Moreover as underwriters, Credit Suisse Securities and
14 Deutsche Bank had a duty to perform due diligence on the securitizations
15 they underwrote. Frequently, they relied on outside firms to conduct
16 reviews of underlying mortgage loans. One of the largest third party due
17 diligence firms is Clayton Holdings ("Clayton"). As the FCIC report found:
18 "Because of the volume of loans examined by Clayton during the housing
19 boom, the firm had a unique inside view of the underwriting standards that
20 originators were actually applying – and that securitizers were willing to
21 accept."

22 125. For each loan pool it was hired to review, Clayton checked for:
23 (1) adherence to seller-credit underwriting guidelines and client-risk
24 tolerances; (2) compliance with federal, state and local regulatory laws; and
25 (3) the integrity of electronic loan data provided by the seller to the
26 prospective buyer. Contract underwriters reviewed the loan files, compared
27 tape data with hard copy or scanned file data to verify loan information,

1 identified discrepancies in key data points, and graded loans based on seller
2 guidelines and client tolerances.

3 126. Clayton generated regular reports for the underwriter, the
4 sponsor and the originator that summarized Clayton's review findings,
5 including summaries of the loan files that were outside the relevant
6 underwriting standards. Once Clayton identified such problems, the
7 originator had the right to cure the deficiencies. If additional information
8 was provided by an originator, Clayton re-graded the loan. Once this
9 process was complete, Clayton provided the relevant underwriters, sponsors
10 or originators with final reports.

11 127. Clayton gave loans one of three grades – Grade 3 loans “failed
12 to meet guidelines and were not approved,” while Grade 1 loans “met
13 guidelines.” Tellingly, only 54% of the nearly one million loans reviewed
14 by Clayton “met guidelines.”

15 128. Recently released internal Clayton documents show that a
16 startlingly high percentage of defective loans reviewed by Clayton were
17 included by Credit Suisse Securities in loan pools underlying the Certificates
18 sold to Western & Southern and others. According to Clayton, 32% of the
19 56,300 loans that it reviewed for Credit Suisse Securities from the first
20 quarter of 2006 through the second quarter of 2007 failed to conform to
21 Credit Suisse Securities' stated underwriting standards.

22 129. Credit Suisse Securities not only continued to work with
23 problematic originators such as Countrywide, but also failed to conduct any
24 investigation of its own, ignoring the red flags raised by Clayton's results.
25 According to Clayton, of the 32% of loans identified as non-compliant,
26 Credit Suisse Securities “waived in” a third of them (or 11% of the total
27

1 group), including loans in securitizations purchased by investors such as
2 Western & Southern.

3 130. Clayton's reports also reveal that from January 2006 to June
4 2007, 35% of the mortgages Deutsche Bank submitted to Clayton for review
5 were rejected as outside underwriting guidelines. Some 50% of such loans
6 were subsequently "waived in" by Deutsche Bank. Of the nine banks that
7 FCIC investigated, Deutsche Bank was second both in the number of loans
8 rejected by Clayton and in the number of loans it subsequently waived in.

9 **VI. COUNTRYWIDE ROUTINELY FORGED OR FALSIFIED**
10 **LOAN DOCUMENTS**

11 131. Countrywide not only defrauded investors such as Western &
12 Southern, it defrauded countless borrowers (and other third parties) as well.

13 132. Eileen Foster, former head of Countrywide's mortgage fraud
14 investigations unit, has provided extensive information about acts of forgery
15 that she uncovered while at Countrywide. *See* Ex. I (Occupational Safety
16 and Health Administration ("OSHA") Order dated September 13, 2011).

17 133. For example, without knowledge of employees in the Boston
18 region, she had bins of documents headed for shredding set aside for her
19 investigators to review. They discovered that Countrywide employees
20 regularly doctored loan applications by using "white-out" or tape to change
21 important information on loan applications and appraisals. The alterations
22 were made for the sole purpose of allowing unqualified borrowers to qualify
23 for loans.

24 134. In her FCIC testimony on July 30, 2010, Foster stated that
25 salespeople who needed to appraise a property at an excessive value simply
26 took an appraisal from another property with the desired value and pasted
27 the new address onto the old appraisal.

1 135. According to Foster, salespeople also had blank account
2 statements from a number of major banks that they would use to create
3 forged document statements to support fake reports of borrowers' assets.

4 136. One Countrywide office had two fax machines, one used to fax
5 false and fraudulent documents to the other in order to make it appear that
6 the forged documents were sent by borrowers.

7 137. Foster testified that Countrywide was not concerned with fraud
8 prevention, but instead, focused exclusively on loan production. Foster was
9 not allowed to investigate certain business units and branches, and other
10 times would need the approval of the local salespeople to even visit a
11 branch.

12 138. Bank of America fired Foster after it assumed control of
13 Countrywide. The Department of Labor subsequently ruled that she was
14 improperly terminated, awarded her nearly a million dollar judgment, and
15 ordered Bank of America to reinstate her. *See* Ex. I.

16 139. The Department of Labor found that Foster discovered
17 numerous instances of "loan document forgery and alteration, manipulation
18 of borrower's assets and income, manipulation of the company's automated
19 underwriting system, the destruction of valid client documents, and evidence
20 that blank templates of bank statements from several different financial
21 institutions were emailed back and forth among loan officers in various
22 branches for use in forging proof of borrower income and assets." Ex. I at 2.

23 140. According to the Department of Labor, Foster "was particularly
24 concerned that [Countrywide] was engaged in the systematic cover-up of
25 various types of fraud through terminating, harassing, and otherwise trying
26 to silence employees who reported the underlying fraud and misconduct."
27 Ex. I at 2.

1 141. One of Foster's duties was to prepare Suspicious Activities
2 Reports ("SARs") for submission to federal authorities. Foster attempted to
3 improve Countrywide's SAR reporting in order to ensure that the numerous
4 instances of fraud within Countrywide were reported properly. As she told
5 the FCIC during her interview, Countrywide "grossly underfiled" SARs.
6 Countrywide and Bank of America resisted her efforts and attempted to
7 "hide widespread bank, mail, and wire fraud" within Countrywide. Ex. I at
8 2.

9 142. Foster stated during her FCIC testimony that in January or
10 February 2008 she discussed Countrywide's woefully deficient federal
11 controls with federal banking regulators.

12 143. Ultimately, Bank of America fired Foster for her repeated acts
13 of whistle blowing.

14 144. Foster's testimony of widespread forgeries committed by
15 Countrywide or its third party affiliated mortgage brokers is confirmed by
16 the many examples of forgeries Western & Southern has discovered in the
17 course of its investigation. Below are three examples of their forgeries:

18 **A. The Audrey Sweet Mortgage Loan**

19 145. Audrey Sweet purchased a home in Maple Heights, Ohio
20 around August 2005 and obtained a Countrywide loan to finance the
21 purchase price. On July 25, 2007, Sweet submitted testimony to the Joint
22 Economic Committee of Congress about the falsification of documents used
23 to obtain her loan and other predatory lending practices she experienced at
24 the hands of Countrywide.

25 146. Shortly after obtaining her mortgage, Sweet received a letter
26 from Countrywide informing her that her mortgage payment was going to
27 increase from \$1,055.61 to \$1,713.88 to account for a rate increase and

1 Countrywide's payment of her back taxes. Sweet could not afford the
2 increase.

3 147. Sweet testified that after her loan closed, she discovered that
4 Countrywide increased the monthly income she provided the Countrywide
5 representative without her knowledge and also falsely overstated her assets.
6 As Sweet testified:

7 [M]y gross monthly income was recorded as \$726 dollars more
8 than it actually was. Secondly, I have two sets of loan
9 documents, one that was created 10 days before we closed and
10 one that was created the day of closing. The closing day
11 documents list my assets as \$9,400 in my Charter One Bank
12 Account. I have never had \$9,400 in the bank. Indeed, coming
13 up on payday, I am fortunate to have \$94 left. The final item I
14 noticed was that the tax amount listed on the appraisal report
15 was \$1981.34, which comes to about \$165 per month but
16 Countrywide listed \$100 as the tax amount.

17 148. Sweet testified that, unbeknownst to her, the Countrywide
18 representative forged the documentation necessary for her to qualify for the
19 loan by overstating her income and assets, including falsified bank account
20 holdings and understated property taxes.

21 **B. The Girgis Mortgage Loan**

22 149. In late 2006, Ohio residents Dr. Joseph and Nermine Girgis
23 purchased a Florida vacation condominium. To finance this purchase, the
24 Girgis obtained two mortgages from Countrywide in the amounts of \$1
25 million and \$147,500. In April 2007, the couple purchased a second unit at
26 the same address for over \$1 million. To finance this second purchase, they
27 also obtained two mortgages from Countrywide in the amounts of \$920,000

1 and \$115,000. *See Girgis v. Countrywide Home Loans, Inc.*, No. 10-cv-590-
2 JG, 2010 U.S. Dist. LEXIS 114842, at *2 (N.D. Ohio Oct. 28, 2010)
3 (findings of fact).

4 150. In a subsequent dispute with Countrywide, Dr. Girgis testified
5 by affidavit that the first loan was supported by a forged loan document, and
6 the second loan was fraudulently notarized and witnessed. J. Girgis Aff. ¶¶
7 1, 3, 7-13, *Girgis v. Countrywide Home Loans, Inc.*, No. 10-cv-590-JG,
8 Docket Entry No. 39-1 filed October 19, 2010.

9 151. Girgis further stated in his affidavit that his income from a lease
10 was necessary to qualify for the second loan, as he was a weak credit,
11 initially rejected by Countrywide's Loan Underwriting Expert System
12 (CLUES) given his 74% debt-to-income-ratio. He also stated that the
13 signature on that lease was "witnessed" by Grace Torres and Maria Diaz,
14 notwithstanding that Dr. Girgis had never met with nor spoken to either
15 person. Each mortgage on the second condominium was notarized by
16 Denise Colado and witnessed by Elizabeth Smart, again notwithstanding that
17 Dr. Girgis had never met with nor spoken to either person.

18 152. During the course of its investigation, Western & Southern
19 spoke with the Girgis's attorney in their lawsuit against Countrywide. Their
20 attorney confirmed the accuracy of the statements Dr. Girgis made in his
21 affidavit.

22 **C. The Dana Miller Mortgage Loan**

23 153. Ohio resident Dana Miller obtained an ARM mortgage from
24 Avizen Solutions in June 2004, and sometime thereafter Countrywide
25 purchased Avizen Solutions. Miller Aff. ¶ 10, *Miller v. Countrywide Home*
26 *Loans*, No. 09-cv-00674-EAS-TP, Docket Entry 52 (S.D. Ohio Feb. 18,

1 2011).¹ In a subsequent dispute, Miller testified that Countrywide barraged
2 him with phone calls urging him to refinance his loan because “interest rates
3 were going to 7% or more in the immediate future.”

4 154. Miller also testified that beginning in March 2006, Tiffany L.
5 Smith, an account executive at Countrywide, began calling him and
6 reiterating that he needed to refinance immediately to avoid rising interest
7 rates. Miller was eventually convinced to refinance his loan for a new
8 Countrywide loan that cost him over \$11,000 in fees.

9 155. Smith told Miller that in order to qualify for the refinancing, he
10 would have to claim an income of \$7,000 per month. When Miller told
11 Smith that he had never made that much money, she responded that “it does
12 not matter what you make; this is what I need to put down for you to qualify
13 you for the loan.”

14 156. Smith also told Miller that an appraisal would have to come in
15 at \$345,000 to qualify for the loan. When Miller told Smith that his house
16 was not even worth \$300,000, she told him he did not “know what property
17 in your area is worth.” Miller also testified that an appraisal by Landsafe
18 Appraisal over-valued Miller’s property “to enable the consummation of a
19 fraudulent loan.” On the basis of that “appraisal” and his stated income,
20 Miller was approved for the loan to his detriment and for the benefit of
21 Countrywide and Smith. On August 28, 2008, a foreclosure action was filed
22 against Miller, and he later lost his home.

23 157. During the course of its investigation, Western & Southern
24 spoke with Miller. He confirmed the truth of the facts contained in that
25 affidavit.
26

27

¹ The affidavit was stricken from the docket on procedural grounds.

D. Other Acts of Forgery and Falsification

158. Maria Santana, a school teacher and resident of New Haven, Connecticut, told her story in testimony before the Connecticut General Assembly. Santana purchased a condominium in 2006 with a Countrywide mortgage loan and second lien home equity loan. The Countrywide representative that handled her application falsified her income by inflating it 300% without her knowledge. The Countrywide representative provided a false savings account on the application to create the illusion that Santana had a higher net worth. As Santana testified:

I was unable to go over any of the paperwork with the people from Countrywide because they did not show up to the closing. At the time I signed the mortgage documents I did not realize that my income had been falsely inflated on the application. I told Countrywide my true income but it was tripled on the application. The application also shows a fake savings account that I did not put on the application. I could not afford the payments and the Wall Street trust that now owns my loan filed a foreclosure against me last January. At the time of the foreclosure, the monthly payments on my two loans were nearly 100% of my monthly income.

159. Julie Santoboni, who took out a Countrywide mortgage on her family's home in Washington, D.C., was interviewed on National Public Radio. She reported that when she and her husband reached out to Countrywide to refinance their home's adjustable-rate loan, a Countrywide loan officer pressured her to lie about her income to obtain a more attractive loan, since she had taken off two years of work to spend time with her children. The loan officer said that he could increase her husband's listed

1 income and that the underwriters would not question the income because her
2 husband's job title included the word "manager."

3 160. Santoboni said that the Countrywide loan officer wanted her to
4 write a letter stating she made \$60,000 during each of the past two years and
5 have her accountant sign it, even though she had no income. The loan
6 officer continued to give her a "hard sell," pressuring her to lie about her
7 income in order to obtain a more favorable interest rate. Santoboni followed
8 up with Countrywide to complain about the incident, but received no
9 response as of the time of the interview. She also filed a complaint with the
10 Federal Office of Thrift Supervision about the wrongdoing.

11 161. A Countrywide borrower named Bruce Rose described
12 obtaining a mortgage loan from Countrywide that stated his monthly income
13 as \$12,166, as he realized only later, when his annual income at the time was
14 only around \$16,000.

15 162. One borrower told NBC News that her Countrywide loan
16 officer told her to claim she made more than twice her actual income in
17 order to gain approval for her loan.

18 163. According to Mark Zachary, a former Regional Vice President
19 of Countrywide, a Countrywide customer stated in a September 19, 2006
20 email:

21 I was told that my loan had been turned over to Countrywide's
22 internal fraud department for review because a loan officer
23 increased my income figures without authorization in order to
24 get me approved for the stated-income loan. I was told by
25 several people at Countrywide that this was done just to get me
26 qualified and that nobody would check on it.
27

1 164. These are not isolated acts of forgery and perjury. Numerous
2 former Countrywide employees have attested to the fraud regularly
3 committed at Countrywide.

4 165. An employee of Countrywide Home Loans alleged that “loan
5 officers were falsifying and fabricating information on the borrower loan
6 applications” and providing Borrower Authorization and Certification forms
7 “which contained forged or false borrower signatures.” Compl. ¶ 6,
8 *Manegdeg v. Countrywide Home Loans, Inc.*, No. BC391220 (filed May 20,
9 2008, Cal. Sup. Ct., Los Angeles County).

10 166. A Countrywide employee has alleged the she witnessed
11 “incidents of fraud, including, but not limited to, changing the loan
12 applicant’s salary, so the applicant would qualify for a loan and signing the
13 applicant’s name to loan documents.” Compl. ¶ 18, *Brunelli v. Countrywide*
14 *Financial*, No. 34-2009-40957 (filed April 13, 2009, Cal. Sup. Ct.,
15 Sacramento County).

16 167. The testimony of numerous Countrywide victims and former
17 employees makes clear that Countrywide employees systematically engaged
18 in acts of forgery in Ohio and elsewhere with effects in Ohio on investors
19 like Western & Southern.

20 **E. Predatory Lending Practices**

21 168. While Countrywide claimed that its mission was to find “the
22 best loan possible” for each individual buyer, the opposite was true.
23 Countrywide regularly steered borrowers to loans with onerous terms that
24 were more profitable for Countrywide. As reported by the *New York Times*
25 in August 2007:

26 [P]otential borrowers were often led to high-cost and
27 sometimes unfavorable loans that resulted in richer

1 commissions for Countrywide's smooth-talking sales force,
2 outsized fees to company affiliates providing services on the
3 loans, and a roaring stock price that made Countrywide
4 executives among the highest paid in America.

5 Countrywide's entire operation, from its computer system to its
6 incentive pay structure and financing arrangements, is intended
7 to wring maximum profits out of the mortgage lending boom no
8 matter what it costs borrowers, according to interviews with
9 former employees and brokers who worked in different units of
10 the company and internal documents they provided. One
11 document, for instance, shows that until last September the
12 computer system in the company's subprime unit excluded
13 borrowers' cash reserves, which had the effect of steering them
14 away from lower-cost loans to those that were more expensive
15 to homeowners and more profitable to Countrywide.

16 Gretchen Morgenson, *Inside the Countrywide Lending Spree*, N.Y. TIMES,
17 Aug. 26, 2007.

18 169. Countrywide employees encouraged the third party mortgage
19 brokers to do the same. For example, as reported by the *New York Times* in
20 August 2007:

21 While mortgage brokers' commissions would vary on loans that
22 reset after a short period with a low teaser rate, the higher the
23 rate at reset, the greater the commission earned, these people
24 said. . . .

25 CONSIDER an example provided by a former mortgage broker.
26 Say that a borrower was persuaded to take on a \$1 million
27 adjustable-rate loan that required the person to pay only a tiny

1 fraction of the real interest rate and no principal during the first
2 year — a loan known in the trade as a pay option adjustable-
3 rate mortgage. If the loan carried a three-year prepayment
4 penalty requiring the borrower to pay six months' worth of
5 interest at the much higher reset rate of 3 percentage points over
6 the prevailing market rate, Countrywide would pay the broker a
7 \$30,000 commission. . . .

8 The company's incentive system also encouraged brokers and
9 sales representatives to move borrowers into the subprime
10 category, even if their financial position meant that they
11 belonged higher up the loan spectrum.

12 *Id.*

13 170. These predatory lending practices were not limited to
14 Countrywide brokers but included a network of third party entities such as
15 Mid Atlantic Capital, One Source Mortgage and other non-party mortgage
16 brokers. At its peak, this Countrywide network included over 30,000
17 mortgage brokers. Countrywide's wholesale lending channel underwrote
18 loans originated by these brokers and other financial intermediaries.

19 171. In fact, Countrywide had so many independent brokers that it
20 did not provide them with IRS Form 1099s, which businesses normally must
21 file for independent contractors who meet certain earnings criteria.
22 According to the New York Times, one independent broker, surprised she
23 did not receive one after her first year working for Countrywide – even
24 though she received one from every other entity for which she did work –
25 called Countrywide to inquire. She was told by a Countrywide
26 representative, “We’re too big. There’s too many. We can’t do it.”
27

1 172. In order for third party brokers to submit loan files to
2 Countrywide, the brokers first had to submit an application to Countrywide
3 and then enter into a Wholesale Broker Agreement. Once that agreement
4 was finalized, Countrywide went on to inculcate the broker into its way of
5 doing business.

6 173. Third party brokers were given a standardized Countrywide
7 script for calls to potential customers. The script instructed the brokers to
8 begin their sales pitch with the (now proven false) claim that they would find
9 the best loan possible for the borrowers. In reality, the brokers' real intent
10 was to attempt to sell borrowers the loan that would earn the brokers the
11 highest commission and Countrywide the highest profit.

12 174. Countrywide's incentive structure was an integral part of its
13 scheme to originate the highest number of short-term profitable loans
14 possible. Countrywide offered inflated commissions on non-conforming
15 loans, including loans that would fetch a higher price in the securitization
16 market, such as loans with prepayment penalties likely to generate a stream
17 of income over time. It did not matter to the third party brokers or
18 Countrywide that such loans cost borrowers more in fees and interest
19 payments than other products for which the borrowers were qualified. All
20 that mattered was closing the loans and booking commissions, fees and
21 profits in the aftermarket.

22 175. Many of the loans sold by internal and third party brokers were
23 highly complex, involving features like pay options and negative
24 amortization. The brokers sold those loans without considering whether
25 they were suitable for borrowers, and indeed, many brokers did not
26 understand or were not given enough information to be able to explain many
27 features of the loans.

1 176. After qualifying to submit loans to Countrywide, third party
2 brokers were given access to the Countrywide Loan Expert Underwriting
3 Systems (also known as CLUES), a computerized approval system used by
4 Countrywide's internal brokers.

5 177. As the *New York Times* uncovered, the CLUES system steered
6 borrowers into higher cost sub-prime loans even when they qualified for
7 lower cost prime loans. The system did so by excluding important borrower
8 information, such as cash reserves, from its calculations. CLUES was
9 designed to provide third party and internal brokers with approvals from
10 Countrywide in a matter of minutes, a feature used by brokers to exert
11 maximum pressure in pushing borrowers into unsuitable loans.

12 178. Countrywide's goal was thus two-fold: to originate as many
13 loans as possible while pushing as many borrowers as possible into loans
14 with the greatest profit for Countrywide, and then to sell off the bottom of
15 the barrel to mortgage-backed securities investors like Western & Southern.

16 179. The Countrywide network of internal and third party brokers all
17 acted together with the same purpose. The Defendants' success depended
18 on all participants, incentivized by commissions, increased salary, and, in
19 the case of Mozilo and other Officer Defendants, multi-million dollar
20 bonuses, having the single goal of originating the most profitable loans.

21 180. Additional Countrywide loans were obtained from its
22 Correspondent Lending Channel. In that program, Countrywide provided
23 lines of credit to mortgage originators and other financial institutions
24 including commercial banks, savings and loans and credit unions. After
25 purchasing the loans from correspondent lenders, Countrywide securitized
26 them and sold them off to investors like Western & Southern. Vast amounts
27 of the loans originated through the correspondent channel were, however,

1 fraudulently originated and Countrywide's securitization of them offloaded
2 that risk onto investors.

3 181. During the relevant period, correspondent loans made up
4 between 42% and 47% of Countrywide's total mortgage production. *See*
5 2007 Countrywide 10-K at 6. In 2007, the Correspondent Lending Channel
6 was comprised of approximately 1,760 lenders. *Id.* at 5.

7 182. The correspondent lenders were fully integrated with
8 Countrywide. They had access to the CLUES program, and Countrywide
9 also provided them with a program called Platinum Lender Access. That
10 program permitted lenders to register and underwrite loans, order products
11 like flood insurance and manage their loan pipelines. Countrywide's Loan
12 Origination and Underwriting system ("CLOUT") was also a part of the
13 Platinum system. CLOUT provided correspondents every possible
14 Countrywide loan option available, including the terms and documentation
15 requirements of each. All these programs integrated the correspondent
16 lenders with Countrywide and enabled them to churn out even more loans at
17 great speed.

18 183. Countrywide also provided correspondents with credit
19 applications, loan contracts and other necessary forms to enable the
20 correspondents to initiate and close loans quickly. It also authorized
21 correspondents to accept applications on its behalf and quickly provided
22 financing rate quotes and other applicable Countrywide terms. Finally,
23 Countrywide itself funded the loans before or shortly after they were
24 consummated with funds from Countrywide.

25 184. Countrywide claims that it carefully vetted its correspondent
26 lenders and the loans they originated to assure investors that those loans
27 were underwritten in accordance with Countrywide's own guidelines. For

1 example, Countrywide claimed its correspondent lenders were “subject to
2 initial and ongoing credit evaluation and monitoring.” *See* 2007
3 Countrywide 10-K at 5. Countrywide also claimed that “[a]ll of the
4 mortgage loans in the issuing entity will have been originated *or acquired* by
5 Countrywide Home Loans in accordance with its credit, appraisal and
6 underwriting standards.” *See, e.g.,* CWALT 2007-17CB Prospectus
7 Supplement at S-36.

8 185. Given the wholesale abandonment of its underwriting
9 guidelines with respect to the loans it originated and purchased, as described
10 above, the correspondent loans that Countrywide securitized were
11 fraudulently originated and contained defects at alarmingly high rates. A
12 substantial portion of the fraudulent loans securitized by Countrywide came
13 from correspondents since they originated nearly half of all Countrywide
14 loans. Moreover, the correspondent lenders had little motivation to ensure
15 that the loans they sold to Countrywide were properly underwritten since
16 they would bear no risk of loss from non-performing loans. The
17 correspondent lenders would offload that risk to Countrywide who, in turn,
18 would securitize the loans and offload that risk to investors like Western &
19 Southern.

20 186. Among the correspondent lenders that originated loans for
21 Countrywide were People’s Choice Mortgage, Summit Mortgage LLC,
22 Loans for Residential Homes Mortgage Corporation, Sprint Funding
23 Corporation, Ameribanq Mortgage Group LLC and E-Loan, Inc. These and
24 other correspondent lenders regularly sold Countrywide fraudulent loans.

25 187. For example, between November 2003 and August 2005, a
26 group perpetrating a mortgage fraud scheme obtained 136 fraudulent loans
27 from People’s Choice Mortgage and other loan originators, totaling

1 \$16,613,850. Countrywide funded certain of those fraudulent loans through
2 its correspondent arrangement with People's Choice Mortgage. At least one
3 member of the group has since pleaded guilty to participating in a mortgage
4 fraud scheme in obtaining those loans, including to charges of wire fraud,
5 conspiracy to commit wire fraud and money laundering.

6 188. Given the diligence of its correspondent lenders that
7 Countrywide claimed to have performed in its SEC filings, Countrywide
8 knew of the fraudulent and defective origination practices by the
9 correspondent lenders.

10 **F. Cheating Borrowers After Default**

11 189. Countrywide and Bank of America cheated borrowers after
12 default.

13 190. When a Countrywide borrower defaults, BAC Servicing is
14 permitted to take action to preserve the value of the mortgaged property.
15 For example, BAC Servicing may order a property inspection for the
16 purpose of verifying the occupancy status of defaulting borrowers' home.
17 When homes are in the foreclosure process, BAC Servicing may provide
18 maintenance services such as lawn mowing and security.

19 191. BAC Servicing uses Bank of America affiliated entities,
20 including LandSafe Default, Inc. (also known as LandSafe National Default,
21 "LandSafe"), and ReconTrust Company, N.A. ("ReconTrust"), to hire third
22 party vendors to perform default-related services. BAC Servicing in turn
23 charges the defaulting borrowers. Notwithstanding that mortgage loan
24 documents require BAC Servicing to charge more than actual cost, it
25 routinely marked up its servicing charges by up to 100%.

26 192. When a defaulting borrower's home is foreclosed upon and
27 sold, BAC Servicing deducts these fees (which defaulting borrowers are in

1 no position to pay themselves) from sale proceeds before any funds are
2 transferred to the securitization trust that purportedly owned the mortgage
3 loan and the foreclosed property.

4 193. Defendant Sambol touted this profiteering from default-related
5 services during an October 2007 earnings call:

6 Now, we are frequently asked what the impact of our servicing
7 costs and earnings will be from increased delinquencies and
8 [loss] mitigation efforts, and what happens to costs. And what
9 we point out is, as I will now, is that increased operating
10 expenses in times like this tend to be fully offset by increases in
11 ancillary income in our servicing operation, greater fee income
12 from items like late charges, and importantly from in-sourced
13 vendor functions that represent part of our diversification
14 strategy, a counter-cyclical diversification strategy such as our
15 businesses involved in foreclosure trustee and default title
16 services and property inspection services.

17 194. On June 7, 2010, the Federal Trade Commission (“FTC”)
18 commenced a lawsuit against Countrywide Home Loans and BAC Servicing
19 for gouging borrowers for default-related services. Countrywide Home
20 Loans and BAC Servicing eventually paid \$108 million to settle the charges.

21 195. The FTC has found that Countrywide and BAC Servicing
22 committed numerous frauds in bankruptcy proceedings. According to the
23 FTC, “Countrywide made false or unsupported claims to borrowers about
24 amounts owed or the status of their loans. Countrywide also failed to tell
25 borrowers in bankruptcy when new fees and escrow charges were being
26 added to their loan accounts.”
27

1 196. Countrywide, BAC Servicing and Bank of America run an
2 insurance scam involving property and casualty insurance. When borrowers
3 default on their mortgage loans, they often stop paying their homeowners'
4 insurance premiums. When that happens, BAC Servicing replaces the
5 policies with policies underwritten by Balboa Insurance, which until very
6 recently was an affiliate of Bank of America. Balboa Insurance charges
7 outrageous rates for these so called "forced-placed" policies, typically
8 several times the premium under the original policy.

9 **VII. COUNTRYWIDE FAILED PROPERLY TO ASSIGN**
10 **MORTGAGES AND FAILED TO DELIVER LOAN FILES TO**
11 **THE TRUSTS**

12 197. A fundamental step in the mortgage securitization process is the
13 transfer to a mortgage-backed security trust of good title to mortgage loans
14 underlying the security. This is necessary in order for the trust to be entitled
15 to enforce the mortgage loans in case of default.

16 198. Two documents relating to each mortgage loan must be validly
17 transferred to the trust as part of the securitization process – a promissory
18 note and a security instrument (either a mortgage or a deed of trust).

19 199. The rules for these transfers are governed by the law of the state
20 in which the property is located, by the terms of the pooling and servicing
21 agreement ("PSA") for each securitization, and by the law governing the
22 issuing trust (with respect to matters of trust law).

23 200. Generally, state laws and PSAs require the promissory note and
24 security instrument to be transferred by endorsement, in the same way that a
25 check can be transferred by endorsement, or by sale. In addition, state laws
26 generally require that the trustee have physical possession of the original,
27

1 manually signed note in order for the loan to be enforceable by the trustee
2 against the borrower in case of default.

3 201. In order to preserve the bankruptcy-remote status of the issuing
4 trusts in mortgage-backed securities transactions, the notes and security
5 instruments are generally not transferred directly from the mortgage loan
6 originator to the trust. Rather, the notes and security instruments are initially
7 transferred from the originator to the depositor, either directly or via one or
8 more special-purpose entities. After this initial transfer to the depositor, the
9 depositor transfers the notes and security interests to the issuing trust for the
10 particular securitization. Each of these transfers must be valid under
11 applicable state law in order for the trust to have good title to the mortgage
12 loans.

13 202. PSAs generally require the transfers of mortgage loans to the
14 trust to be completed within a strict time limit after formation of the trust in
15 order to ensure that the trust is properly formed.

16 203. Applicable state trust law generally requires strict compliance
17 with the trust documents, including the PSA, so that failure to comply
18 strictly with the timeliness, endorsement, physical delivery and other
19 requirements of the PSA with respect to the transfers of notes and mortgages
20 results in void transfers and lack of good title.

21 204. Attorneys General from all 50 states are currently investigating
22 the misdeeds of Countrywide, Bank of America, BAC Servicing and others
23 who have attempted to cover up the widespread failure properly to assign
24 mortgage loans to securitization trusts foreclosing on homes without proper
25 documentation. Upon information and belief, the Attorneys General have
26 uncovered significant evidence of wrongdoing by Countrywide, Bank of
27

1 America, and BAC Servicing, independent of the evidence described herein,
2 that would be obtained during discovery in this action.

3 **A. Countrywide Representations**

4 205. The Offering Materials represented that each mortgage
5 represented a valid lien such that the issuing trust could foreclose upon the
6 mortgage in the event of a borrower's default. For example, the Offering
7 Materials for CWALT 2007-16CB represented that "each loan is secured by
8 a valid lien on, or a perfected security interest with respect to, the Property."
9 CWALT 2007-16CB Prospectus Supplement at 26. The same or
10 substantially identical representations appeared in the Offering Materials
11 relating to each of the other securitizations that are subject to this action.
12 *See* Exhibit E.

13 206. Defendants represented in the Offering Materials associated
14 with each securitization that the underlying mortgages and notes would be
15 properly assigned to the trusts and that the loan files would similarly be
16 delivered to the trusts. For example, the CWALT 2007-16CB Offering
17 Materials represented:

18 [O]n the closing date, the depositor will sell, transfer, assign,
19 set over and otherwise convey without recourse to the trustee in
20 trust for the benefit of the certificateholders all right, title and
21 interest of the depositor in and to each mortgage loan and all
22 right, title and interest in and to all other assets included in
23 Alternative Loan Trust 2007-16CB, including all principal and
24 interest received on or with respect to the mortgage loans, but
25 not any principal and interest due on or before the cut-off date.

26 In connection with the transfer and assignment of a
27 mortgage loan, the depositor will deliver or cause to be

1 delivered to the trustee, or a custodian for the trustee, the
2 mortgage file, which contains among other things,

- 3 • the original mortgage note (and any modification or amendment
4 to it) endorsed in blank without recourse, except that the
5 depositor may deliver or cause to be delivered a lost note
6 affidavit in lieu of any original mortgage note that has been
7 lost;
- 8 • the original instrument creating a first lien on the related
9 mortgaged property with evidence of recording indicated
10 thereon or a copy of such instrument;
- 11 • an assignment in recordable form of the mortgage or a copy of
12 such assignment;
- 13 • the original or a copy of the title policy with respect to the
14 related mortgaged property; and
- 15 • if applicable, all recorded intervening assignments of the
16 mortgage or copies thereof and any riders or modifications to
17 the mortgage note and mortgage or copies thereof (except for
18 any documents not returned from the public recording office,
19 which will be delivered to the trustee as soon as the same is
20 available to the depositor).

21 CWALT 2007-16CB Prospectus Supplement at S-39-S-40. The same or
22 substantially identical representations appeared in the Offering Materials
23 relating to each of the other securitizations in this action. *See* Exhibit E.

24 207. The Offering Materials further assured investors that transfers
25 of mortgage loans through the Mortgage Electronic Registration System
26 (“MERS”) were sufficient to ensure that the mortgage loans could be
27

1 foreclosed upon in the event of a borrower's default. For example, the
2 CWALT 2007-16CB Offering Materials state:

3 For any mortgage held through the MERS® System, the
4 mortgage is recorded in the name of Mortgage Electronic
5 Registration Systems, Inc., or MERS, as nominee for the owner
6 of the mortgage loan, and subsequent assignments of the
7 mortgage were, or in the future may be, at the discretion of the
8 master servicer, registered electronically through the MERS®
9 System. For each of these mortgage loans, MERS serves as
10 mortgagee of record on the mortgage solely as a nominee in an
11 administrative capacity on behalf of the trustee, and does not
12 have any interest in the mortgage loan.

13 CWALT 2007-16CB Prospectus Supplement at S-41. The same or
14 substantially identical representations appeared in the Offering Materials
15 relating to each of the other securitizations subject to this action. *See*
16 Exhibit E.

17 208. These disclosures led investors to conclude that Defendants had
18 taken all steps necessary to ensure the trusts could negotiate loan
19 modifications with proper authority and, when necessary, foreclose upon any
20 defaulted mortgage loan. Since the loans underlying the certificates were
21 supposedly secured, the representations concerning the loan collateral were
22 obviously material to investors such as Western & Southern. In many
23 instances, however, the collateral did not properly secure the underlying
24 loans and could not be efficiently realized because Defendants either lost,
25 failed to timely create, or failed to timely deliver the paperwork necessary to
26 prove title to the mortgages and the notes under state law.

B. Contrary to Its Representations, Countrywide Did Not Properly Assign Large Numbers of Mortgages, and Failed Properly to Transfer Loan Files

209. In their zeal to offload toxic loans to investors such as Western & Southern, Countrywide did not come close to complying with the strict rules governing assignment of mortgages, and transfer of promissory notes and loan files. Countrywide lost much of the paperwork relating to the loans underlying their securitizations, or made no attempt to assign mortgages and deliver the original mortgage notes to the issuing trusts as required under state law. They have engaged in a cover up of their failure validly to assign mortgage notes by filing false documentation in courts nationwide and forging assignment documents. The cover-up made possible and facilitated the execution of additional securitizations which damaged investors such as Western & Southern.

210. The Federal Reserve System, the OCC and the OTS recently issued a report finding that Countrywide routinely did not transfer the original mortgage loan documents to the issuing trusts for mortgage-backed securities transactions. In the *Interagency Review of Foreclosure Policies and Practices* released April 2011, the agencies reported that their extensive examinations of mortgage loan servicers including Bank of America, Wells Fargo, JPMorgan Chase Bank (including as successor to WaMu), and Citibank (including CitiMortgage) “showed that servicers possessed original notes and mortgages.” As a result, contrary to the Defendants’ assertions in the Offering Materials, the mortgage note or file for each underlying loan was not transferred properly and none of the trusts has the right to foreclose on any of the affected underlying loans.

1 211. In *Kemp v. Countrywide Home Loans, Inc.*, Bankr. No. 08-
2 18700 (D.N.J.), a Bank of America employee testified that the failure to
3 deliver mortgage loan files to the securitization trust that purportedly own
4 the loans is standard practice. Bank of America, as successor to
5 Countrywide, sought to prove that the BNY, as trustee for an issuing trust
6 that purportedly held the mortgage in question was entitled to enforce the
7 mortgage. Bank of America presented testimony by Linda DeMartini, who
8 had been employed by Bank of America or Countrywide for almost ten
9 years as of August 2009, and was then a supervisor and operational team
10 leader for the litigation management at Countrywide. She testified that
11 Countrywide originated the mortgage in 2006 and transferred it to the BNY
12 as trustee for the issuing trust, but that Countrywide retained the original
13 note in its own possession.

14 212. Even though DeMartini was presented by Bank of America as a
15 witness in an attempt to prove that the loan documents had been validly
16 transferred to the issuing trust, her testimony proved that the loan documents
17 were never validly transferred. She testified that an allonge to the
18 promissory note, which purported to transfer the note to the trust by
19 endorsement, was created only in preparation for the litigation in 2009, long
20 after the purported transfer of the note to the trust in 2006, and was never
21 delivered to the trustee.

22 213. DeMartini testified that the original note was retained by
23 Countrywide and was never delivered to the trustee. Most significantly, she
24 testified on direct examination that not delivering the original note to the
25 trustee was standard business practice:

26 Q. Ms. DeMartini, is it generally the custom to – for your
27 investor [*i.e.*, the issuing trust] to hold the documents?

1 A. No. They would stay with us as the servicer.

2 Q. And are documents ever transferred to the investor?

3 A. If we service-release them they would be transferred to
4 whomever we're service-releasing them to.

5 Q. So I believe you testified Countrywide was the originator of
6 this loan?

7 A. Yes.

8 Q. So Countrywide had possession of the documents from the
9 outset?

10 A. Yes.

11 Q. And subsequently did Countrywide transfer these
12 documents by assignment or an allonge?

13 A. Yes.

14 Q. And –

15 A. Well, transferred the rights, yes, transferred the ownership,
16 not the physical documents.

17 Q. So the physical documents were retained within the
18 corporate entity Countrywide or Bank of America?

19 A. Correct.

20 Q. Okay. And would you say that this is standard operating
21 procedure in the mortgage banking business?

22 A. Yes. It would be normal – the normal course of business as
23 the reason that we are the servicer, as we're the ones that are
24 doing all the servicing, and that would include retaining the
25 documents.

26 214. In response to questioning by the Bankruptcy Judge, DeMartini
27 again testified that "I do know that it is our normal course of action with the

1 loans that we service that we are the ones that retain the – that we retain
2 those documents.” In response to the Court’s question whether the
3 documents are “ever moved to follow the transfer of ownership,” DeMartini
4 testified that “it is not customary for them to move.”

5 215. At a subsequent hearing in September 2009, Bank of America,
6 N.A.’s counsel stated:

7 [A]lthough . . . the UCC and the Master Servicing Agreement
8 apparently requires that, procedure seems to indicate that they
9 don’t physically move documents from place to place because
10 of the fear of loss and the trouble involved and the people
11 handling them. They basically execute the necessary
12 documents and retain them as long as servicing’s retained. The
13 documents only leave when servicing is released.

14 216. In November 2010, the Bankruptcy Court for the District of
15 New Jersey Chief Bankruptcy Judge Judith H. Wizmur held in November
16 2010 that the BNY, as trustee for an issuing trust, could not enforce a
17 mortgage loan for two reasons:

18 First, under New Jersey’s Uniform Commercial Code (“UCC”)
19 provisions, the fact that the owner of the note, the Bank of New
20 York, never had possession of the note, is fatal to its
21 enforcement. Second, upon the sale of the note and mortgage
22 to the Bank of New York, the fact that the note was not
23 properly indorsed to the new owner also defeats the
24 enforceability of the note.

25 *Kemp v. Countrywide Home Loans, Inc.*, No. 08-18700-JHW, Slip Op., at
26 *10-11 (Bankr. D.N.J. Nov. 16, 2010). The Court further held that Bank of
27 America, N.A. also could not enforce the mortgage loan, because as an agent

1 for the owner of the note, Bank of America, N.A. had no more authority to
2 enforce the note than its principal, the BNY. *Id.* at *21.

3 217. As DeMartini testified, parties to mortgage-backed
4 securitizations routinely fail to transfer the original mortgage loan
5 documents to the issuing trusts for MBS transactions. The servicer typically
6 retains the original documents itself because it is easier than complying with
7 state laws regarding assignment. Thus, Defendants failed validly to transfer
8 the promissory notes and security instruments for many of the mortgage
9 loans underlying the Certificates to the issuing trusts.

10 **C. Countrywide's Attempts to Cover Up Transfer and**
11 **Assignment Failures**

12 218. BAC Servicing is the primary servicer for all 32 offerings at
13 issue in this action.

14 219. Bank of America and BAC Servicing employ an army of so-
15 called "robo-signers" who execute tens of thousands of foreclosure affidavits
16 a month, all necessarily false because they are allegedly based on their own
17 personal knowledge, and many of them are without proper documentation
18 including evidence of possession of the underlying mortgage note. The
19 "robo-signers" sometimes attempt to execute assignments retroactive to the
20 closing date of the relevant securitization in an attempt to circumvent state
21 laws governing assignment. Such purportedly retroactive assignments are
22 invalid.

23 220. The Office of the Comptroller of the Currency (the "OCC")
24 issued a Consent Order dated April 13, 2011 finding that Bank of America,
25 including in its role as successor to Countrywide, tried to cover up that
26 issuing trusts do not have legal title sufficient to foreclose upon underlying
27 mortgage loans by engaging in fraudulent or improper foreclosure practices.

1 221. The United States Department of Housing and Urban
2 Development (“HUD”) attempted to investigate Defendants’ faulty handling
3 of assignments to Countrywide Mortgage-Backed Trusts. However,
4 Defendants stonewalled the investigation. According to a declaration filed
5 by a HUD auditor, William W. Nixon, in a lawsuit filed in Maricopa
6 County, Arizona, Bank of America “significantly hindered” HUD’s
7 investigation into Defendants’ faulty assignment practices. Bank of
8 America refused to allow HUD auditors to perform a “walkthrough” of Bank
9 of America’s document repositories and refused to comply with subpoenas.

10 222. Despite Defendants’ attempts to obstruct HUD’s investigation,
11 HUD reportedly discovered that one Bank of America employee executed
12 75,000 foreclosure documents in a two-year period. Another reportedly
13 executed 47,000. Obviously, no effort was made to determine the accuracy
14 of the assertions contained in such documents. Defendants were engaged in
15 an effort to cover up the fact that they systemically failed properly to assign
16 mortgages to issuing trusts, including the trusts that issued the Certificates.

17 223. In states providing for non-judicial foreclosures, Bank of
18 America utilizes its affiliate ReconTrust Company, N.A. (“ReconTrust”) to
19 exert pressure on homeowners in an attempt to cover-up Defendants’ failure
20 properly to assign mortgages. On August 4, 2011, the Attorney General for
21 the State of Washington filed an action against ReconTrust after conducting
22 an extensive investigation and finding that ReconTrust forced people from
23 their homes without adequate documentation.

24 224. As a direct result of this misconduct, in September 2010 Bank
25 of America and its affiliates had to suspend foreclosures in 23 states to allow
26 the company to undertake a review of internal procedures while publicly
27 acknowledging that tens of thousands of foreclosure proceedings were

1 improperly filed. On October 9, 2010, Bank of America and its affiliates’
2 documentation failures and lack of internal controls forced them to suspend
3 foreclosures nationwide.

4 225. Astonishingly, a July 19, 2011 Associated Press report confirms
5 that Defendants continue to “robo-sign” documents and file false foreclosure
6 documents in an ongoing effort to cover up their epic failure to deliver notes
7 and security instruments and deliver loan files as promised in the Offering
8 Materials. The Associated Press interviewed officials with intimate
9 knowledge of mortgage recording in counties across the country. They
10 confirmed that Defendants and other banks were still committing foreclosure
11 fraud and “robo-signing.” As one official stated, “It is still an epidemic.”
12 Recent reports further suggest that the “robo-signing” conspiracy began as
13 early as 2003 unbeknownst to investors.

14 226. On August 4, 2011, the New York State Attorney General filed
15 fraud claims against BNY, the trustee for the Certificates and other
16 securitizations created and serviced by Bank of America, N.A. and its
17 affiliates. The fraud claim concerns BNY and Defendants’ attempt to
18 orchestrate a collusive settlement to brush Defendants’ mortgage-backed
19 securities misconduct under the rug. The New York Attorney General’s
20 claims followed an extensive investigation of Bank of America’s foreclosure
21 practices which found that, as Western & Southern discovered with respect
22 to the Certificates, Bank of America and its affiliates made absolutely no
23 attempt to transfer title to the issuing trusts.

24 227. The New York Attorney General found that Bank of America’s
25 and its affiliates’ blatant disregard for the rules governing assignment has
26 caused, and is continuing to cause, serious harm to investors such as
27 Western & Southern. As the Attorney General stated in his petition in *In the*

1 *Matter of the Application of Bank of New York Mellon* (as Trustee under
2 various Pooling and Servicing Agreements and Indenture Trustee under
3 various Indentures) et al., Index No. 651786/2011 (N.Y. Supr., New York
4 County):

5 [Assignment] provisions are central to any mortgage
6 securitization, but they are now vitally important to trust
7 investors in light of the housing market collapse. Any action to
8 foreclose requires proof of ownership of the mortgage. This
9 must be demonstrated by actual possession of the note and
10 mortgage, together with proof of any chain of assignments
11 leading to the alleged ownership. Moreover, complete
12 mortgage files give borrowers assurance that their properties are
13 properly foreclosed upon. The failure to properly transfer
14 possession of complete mortgage files has hindered numerous
15 foreclosure proceedings and resulted in fraudulent activities
16 including, for example, “robo-signing.”

17 228. The Attorney General’s petition reported that an extensive
18 review of foreclosure proceedings commenced by Bank of America and its
19 affiliates found widespread misconduct. For example, Bank of America and
20 BNY admitted in *Bank of New York v. Kirkland*, Index No. 07-16839 (N.Y.
21 Supr., Westchester County) that an action to foreclose on a mortgage had
22 been commenced despite the fact that the promissory note had not been
23 assigned to the trust that purportedly owned the note. Similarly, in *Bank of*
24 *New York v. Gioio*, Index No. 08-9865 (N.Y. Supr., Westchester County),
25 Bank of America and BNY admitted that a note assignment had been
26 executed two days prior to commencement of the action, contrary to
27 requirements of state law.

**D. Acts of Perjury, Forgery, and “Robo-Signing” In Ohio
Foreclosures**

229. Western & Southern reviewed files from hundreds of foreclosure proceedings filed in the State of Ohio by Countrywide or Bank of America as successor to Countrywide. The results of this investigation demonstrate that Bank of America has committed numerous acts of perjury, forgery falsification and “robo-signing” in the state of Ohio.

230. One of Bank of America’s “robo-signers” is Renee Hertzler. She testified in *Starr v. Bank of America Corp.*, No. 09-41903-JBR (Bankr. D. Mass. Feb. 19, 2010) that she executed 8,000 foreclosure documents a month admittedly without making any attempt to read them or ensure the accuracy of statements in them. Indeed, when asked if she read the documents she “robo-signed” she stated: “I typically don’t read them because of the volume that we sign.” She often represented that she was an employee of the trustee overseeing the securitization at issue or other entities when she was not. This was pure fiction designed to cover-up Defendants’ massive failure to assign mortgage notes.

231. Hertzler and Bank of America committed perjury and forgery in *Countrywide Home Loans Servicing v. Elizabeth Bowers*, No. A 0902481 (Hamilton County). In that case, Bank of America submitted an assignment that purported to transfer a mortgage from American Home Mortgage to Countrywide. Hertzler signed the assignment on behalf of MERS, claiming to be a vice president. She is not an employee of MERS and never has been.

232. BAC Servicing conspired with the Ohio law firm of Lerner, Sampson & Rothfuss of Cincinnati in several foreclosure cases. Shellie Hill, a deed paralegal at Lerner Sampson & Rothfuss, admitted during deposition testimony on September 20, 2010 that she regularly fabricated mortgage

1 assignments by falsely signing as a vice president of MERS. *The Bank of*
2 *New York v. James M. Unger, et al.*, 09-CV-711343 (Cuyahoga County,
3 Ohio). She admitted that she never worked for MERS and had no direction
4 from MERS to sign on its behalf.

5 233. Bank of America filed falsified assignments executed by
6 Shellie Hill in many foreclosure proceedings in Ohio. For example, in
7 *Countrywide Home Loans v. Eric J. Engel*, No. A 0900184 (Hamilton
8 County, Jan. 8, 2009), Bank of America submitted a mortgage assignment
9 dated two days before the foreclosure proceeding was filed. The assignment
10 purported to transfer a mortgage home from Americas Wholesale Lender to
11 Countrywide. Hill signed the assignment as a vice president of MERS. She
12 is not an employee of MERS and never has been.

13 234. Bank of America and Hill have submitted similarly falsified
14 documents in many other proceedings. *See Countrywide Home Loans*
15 *Servicing v. Sherri Noyes*, No. A 0902462, Hamilton County; *BAC Home*
16 *Loans Servicing v. Eric J. Engel*, No. A 0902467, Hamilton County; *BAC*
17 *Home Loans Servicing v. John Klumpp*, No. A 0902467, Hamilton County;
18 *Countrywide Home Loans v. Donald Lay*, No. 08-9777, Montgomery
19 County; *Countrywide Home Loans v. Zella C. Ward*, No. 08-9768,
20 Montgomery County; *Countrywide Homes Loans, Inc. v. Brenda L. Boyd*,
21 No. 08-9779, Montgomery County; *Countrywide Home Loans v. Otha T.*
22 *Lewis III*, No. 08-9876, Montgomery County; *Countrywide Home Loans v.*
23 *Ronald H. Jones*, No. 08-10318, Montgomery County; *Countrywide Home*
24 *Loans Servicing v. Rodney A. Fuller*, No. 08-10484, Montgomery County;
25 *Countrywide Home Loans Servicing v. Chaunda McCray*, No. 08-10611,
26 Montgomery County; *Countrywide Home Loans v. Kendra J. Cron*, No. 08-
27 0690, Montgomery County.

1 235. Keri Selman is an assistant vice president of BAC Servicing
2 based in Texas. Selman regularly claims in documents filed in foreclosure
3 proceedings that she is an employee of entities other than Bank of America
4 when she is not. A New York court recently identified Selman as “a
5 milliner’s delight by virtue of the number of hats she wears” and refused to
6 foreclose upon a home based on an assignment and affidavit signed by her.
7 *Bank of N.Y. v. Myers*, 2009 N.Y. Slip Op 50159(U) (King County Feb. 3,
8 2009).

9 236. Selman and Bank of America committed perjury and submitted
10 a falsified Assignment of Note and Mortgage in *Countrywide Bank, FSB v.*
11 *Wells*, No. A0800892 (Hamilton County, Jan. 25, 2008). The assignment in
12 that case, dated three days before the foreclosure proceeding, purported to
13 transfer a note and mortgage from America’s Wholesale Lender to
14 Countrywide. Keri Selman signed the assignment as a vice president of
15 MERS. She is not an employee of MERS and never has been.

16 237. An especially notorious Bank of America “robo-signer” is
17 Kimberly Dawson, a vice president at the bank. Renee Hertzler admitted
18 during her deposition in *Starr v. Bank of America Corp.* that Dawson
19 regularly signs on behalf of MERS without authorization from MERS to do
20 so.

21 238. In *Countrywide Home Loans v. William D, Angi et al.*, Case
22 No. 08-3180 (April 4, 2008), Bank of America submitted an assignment in a
23 foreclosure proceeding that purported to transfer a mortgage from American
24 Home Mortgage to Countrywide. Dawson signed the assignment on behalf
25 of MERS as nominee for American Home Mortgage, claiming to be a vice
26 president of MERS. She is not an employee of MERS and never has been.

1 239. Western & Southern identified numerous other instances of
2 suspected robo-signers who submitted perjured affidavits to Ohio courts on
3 behalf of Defendants.

4 240. The simple fact is that the original mortgage note and loan file
5 should have been physically delivered to the Trusts. They often were not.

6 **E. Defendants' False Statements Regarding MERS**

7 241. Defendants' representations in the Offering Materials that
8 MERS ensured that each Trust could foreclose upon the underlying
9 collateral were false. As multiple courts have held, because the actual
10 mortgage note is typically not transferred to MERS, MERS is a nullity. In
11 February 2011, MERS instructed its lender members to stop foreclosing in
12 the name of MERS in light of the overwhelming authority that beneficial
13 ownership of an underlying mortgage cannot be transferred to MERS.

14 242. Defendants' representations in the Offering Materials that
15 MERS would be the "beneficial owner" of each mortgage were false. As
16 MERS Recommended Foreclosure Procedure 8 provides, "MERS does not
17 create or transfer beneficial interests in mortgage loans or create electronic
18 assignments of the mortgage."

19 **VIII. COUNTRYWIDE MANIPULATED THE APPRAISAL**
20 **PROCESS**

21 243. The Offering Materials uniformly represent that Defendants
22 required and relied upon independent, industry-standard appraisals to value
23 homes pledged pursuant to the mortgages underlying the Certificates. For
24 example, the Prospectus Supplement for CWALT 2007-16CB told investors:

25 Countrywide Home Loans obtains appraisals from independent
26 appraisers or appraisal services for properties that are to secure
27 mortgage loans. The appraisers inspect and appraise the

1 proposed mortgaged property and verify that the property is in
2 acceptable condition. Following each appraisal, the appraiser
3 prepares a report which includes a market data analysis based
4 on recent sales of comparable homes in the area and, when
5 deemed appropriate, a replacement cost analysis based on the
6 current cost of constructing a similar home. All appraisals are
7 required to conform to Fannie Mae or Freddie Mac appraisal
8 standards then in effect.

9 CWALT 2007-16CB Prospectus Supplement S-43. The Prospectus
10 Supplement for the other securitizations at issue had the same or similar
11 representations. *See* Exhibit F.

12 244. Defendants' representations regarding the appraisal process for
13 properties securing mortgage loans underlying the Certificates were false in
14 at least three respects. First, the appraisers were not independent of
15 Countrywide Home Loans and other loan originators, all of which regularly
16 pressured appraisers to value mortgaged properties at pre-determined,
17 inflated and false values. Second, sales managers employed by the
18 originators had authority to override and inflate appraiser final valuations
19 and they regularly exercised that authority. Third, the appraisals did not
20 conform to Fannie Mae or Freddie Mac standards due to, among other
21 things, the appraisers' lack of independence and originators' override
22 authority.

23 245. Countrywide Home Loans regularly engaged appraisers
24 affiliated with Countrywide, including appraisers that were owned or
25 controlled by Countrywide, either directly or indirectly through intermediate
26 subsidiaries or otherwise subject to Countrywide's influence. This created a
27 conflict of interest. As originator and securitizer of the loans, Countrywide

1 had an incentive to inflate the value of properties because doing so would
2 result in lower LTV ratios. A lower LTV ratio would allow a loan to be
3 approved when it otherwise would not be, and would appear less risky to
4 Western & Southern and other investors. But loans based on inflated
5 appraisals are more likely to default and less likely to produce sufficient
6 assets to repay the lien holder in foreclosure.

7 246. The appraisals in practice were not intended to determine the
8 adequacy of the collateral in the event of a default, but rather to ensure that a
9 large volume of mortgages were rapidly originated, underwritten and
10 securitized with no regard to the value of the collateral.

11 247. According to Capitol West Appraisals, LLC, a company that
12 has provided real estate appraisals to mortgage brokers and lenders since
13 2005, and is a “review appraiser” for Wells Fargo, Washington Mutual and
14 other lenders, Countrywide Financial and Countrywide Home Loans
15 engaged in a pattern and practice of pressuring even non-affiliated real estate
16 appraisers to increase appraisal values artificially for properties underlying
17 mortgages Countrywide Home Loans originated. Capitol West stated that
18 Countrywide Home Loans officers sought to pressure Capitol West to
19 increase appraisal values for three separate loan transactions. When Capitol
20 West refused to vary the appraisal values from what it independently
21 determined was appropriate, Countrywide Home Loans retaliated.

22 248. According to Capitol West, from at least 2004, and likely
23 before, and continuing through at least 2007 when the Mortgage Loans at
24 issue here were being originated and securitized into the Certificates,
25 Countrywide Home Loans maintained a database titled the “Field Review
26 List” containing the names of appraisers whose reports Countrywide Home
27 Loans would not accept without a report from a second appraiser. Capitol

1 West was placed on the Field Review List after refusing to buckle under the
2 pressure to inflate the value of the properties. No mortgage broker would
3 hire an appraiser appearing on the Field Review List to appraise real estate
4 for which Countrywide Home Loans would be the lender, because neither
5 the broker nor the borrower wanted to pay to have two appraisals done.
6 Instead, the broker would simply retain another appraiser who was not on
7 the Field Review List.

8 249. According to Capitol West, Countrywide Home Loans created
9 certain procedures to further enforce its blacklisting of uncooperative
10 appraisers like Capitol West. Specifically, if a mortgage broker were to hire
11 an appraiser that happened to be on the Field Review List, Countrywide's
12 computer systems automatically flagged the underlying property for a "field
13 review" of the appraisal by LandSafe, Inc., a wholly owned subsidiary of
14 Countrywide Financial. LandSafe would then issue another appraisal for the
15 subject property that, without exception, would be designed to "shoot holes"
16 in the appraisal performed by the blacklisted appraiser such that the
17 mortgage transaction could not close based on that appraisal. Indeed,
18 according to Capitol West, in every instance, LandSafe would find defects in
19 the appraisal from the blacklisted appraiser, even if another, non-blacklisted
20 appraiser had arrived at the same value for the underlying property and the
21 non-blacklisted appraiser's appraisal was accepted. According to Capitol
22 West, this is exactly what happened with respect to an appraisal it submitted
23 after it was placed on the Field Review List.

24 250. Because Countrywide was one of the nation's largest mortgage
25 lenders, a substantial portion of any mortgage broker's loans was submitted
26 to it. Because a broker could not rule out that Countrywide would be the
27 ultimate lender, and because mortgage brokers knew that a field review

1 would be required if a blacklisted appraiser were chosen, with the likely
2 result that a mortgage would not be issued with that appraisal, and that its
3 mortgage applicant would have to incur the cost of retaining another
4 appraiser, the broker had a strong incentive to refrain from using a
5 blacklisted appraiser. By these means, Countrywide systematically and
6 deliberately enlisted appraisers in its scheme to inflate appraisals and issue
7 low quality, extremely risky loans.

8 251. A former Countrywide employee, Mari Eisenman, after a few
9 months on the job in or around October 2004 suspected that Countrywide
10 employees were engaged in numerous illegal practices including “securing
11 multiple property appraisals when the original property appraisals failed to
12 qualify the individual for a loan.” *Inside Countrywide, a ‘counseling*
13 *meeting’ then termination*, iWatch News, October 18, 2011.

14 252. Eisenman forced an investigation of the illegal practices by
15 Countrywide’s fraud unit. That investigation substantiated her allegations
16 and, as a result, a branch manager and a number of loans officers were fired
17 or forced to resign. *Id.* After the investigation was complete, Eisenman was
18 terminated – she believes because she forced Countrywide to investigate and
19 expose its fraudulent practices. *Id.*

20 253. Mark Zachary, a former Regional Vice President of
21 Countrywide, claims he was fired for airing his concerns about
22 Countrywide’s underwriting practices. In September 2006, he had informed
23 Countrywide executives that there was a problem with appraisals performed
24 on KB Home properties being purchased with mortgage loans originated by
25 Countrywide. According to Zachary, Countrywide executives knew that
26 appraisers were strongly encouraged to inflate appraisal values by as much
27 as 6% to allow homeowners to “roll up” all closing costs. According to

1 Zachary, this practice resulted in borrowers being “duped” as to the true
2 values of their homes. This also made loans more risky because when
3 values were falsely increased, loan-to-value ratios calculated with these
4 phony numbers were necessarily incorrect.

5 254. Zachary brought his concerns to executives of the
6 Countrywide/KB Homes joint venture, as well as Countrywide executives in
7 Houston, the Employee Relations Department and senior risk management
8 executives. According to Zachary, Countrywide performed an audit in
9 January 2007, and the findings of the audit corroborated his story; and the
10 findings were brought to the attention of Countrywide executives.

11 255. In her FCIC testimony, Eileen Foster stated that she uncovered
12 Countrywide’s systemic practice of fraudulent appraisals of second lien
13 home equity loans. Countrywide utilized an automated system. According
14 to Foster, if the automated program did not value the property at a level
15 sufficient to approve the loan, Countrywide loan officers would enter a
16 different property address until they found one that appraised at the level
17 required.

18 **IX. COUNTRYWIDE MANIPULATED THE RATINGS PROCESS**

19 256. Each tranche of the Certificates received a credit rating
20 indicating the tranche’s risk profile. The initial ratings given to the
21 Certificates were generally AAA, the highest available investment rating.
22 The ratings were material to reasonable investors, including Western &
23 Southern, because they provided assurances that investors would receive the
24 expected interest and principal payments. The Certificates would have been
25 unmarketable to investors like Western & Southern and would not have been
26 issued but for the existence of favorable ratings.

1 257. The Offering Materials represented that the rating agencies
2 conducted an analysis designed to assess the likelihood of delinquencies and
3 defaults in the underlying mortgage pools and issued ratings accordingly.

4 For example, the Offering Materials for CSAB 2006-3 stated:

5 It is a condition to the issuance of the securities of each series
6 offered hereby and by the prospectus supplement that they shall
7 have been rated in one of the four highest rating categories by
8 the nationally recognized statistical rating agency or agencies
9 (each, a “Rating Agency”) specified in the related prospectus
10 supplement. The rating would be based on, among other things,
11 the adequacy of the value of the Trust Fund Assets and any
12 credit enhancement with respect to the class and will reflect the
13 Rating Agency’s assessment solely of the likelihood that
14 holders of a class of securities of the class will receive
15 payments to which the securityholders are entitled under the
16 related Agreement.

17 CWALT 2007-16CB Prospectus at 109-10. The Offering Materials relating
18 to Defendants’ other offerings that are part of this action provide identical or
19 substantially similar disclosures. *See* Exhibit G. Each Prospectus
20 Supplement also provides the ratings for each class of Certificate issued,
21 based on ratings analyses done by two or three ratings agencies.

22 258. These representations were false or misleading. The ratings
23 given to the Certificates by the major credit rating agencies were based on
24 the loan profiles fed to the agencies by Defendants. But as described upon
25 above and below, most (if not all) of the key components of that data were
26 false because Defendants failed to adhere to disclosed underwriting
27 standards, failed to assign title to the underlying mortgages properly, and

1 manipulated the appraisal of properties underlying the mortgage pools. As
2 such, Defendants essentially pre-determined the ratings by “feeding
3 garbage” into the ratings system. This rendered misleading Defendants’
4 representations concerning the ratings and their significance, because
5 Defendants failed to disclose that ratings were based on unreliable
6 information provided by Defendants themselves, and therefore did not
7 reflect the true credit risks associated with the Certificates.

8 259. Countrywide’s practice of feeding misinformation to ratings
9 agencies is highlighted by David Winston’s lawsuit against Countrywide for
10 wrongful discharge. Winston recently won a \$3.8 million jury verdict. He
11 proved that he was discharged from his position at Countrywide for refusing
12 to lie to the ratings agencies that were rating a Countrywide bond offering.
13 As the *New York Times* reported on February 19, 2011:

14 Mr. Winston’s story provides a glimpse into how business was
15 done at Countrywide at the height of the subprime craziness —
16 and how assiduously Angelo R. Mozilo, the company’s fallen
17 leader, worked to quash dissent in the ranks. Mr. Winston had
18 the audacity to question Countrywide practices. Mr. Mozilo
19 was not pleased and, before long, Mr. Winston was
20 marginalized and later dismissed.

21 **X. COUNTRYWIDE RECEIVED MORTGAGE INSURANCE**
22 **KICKBACKS**

23 260. The Offering Materials represented that BAC Servicing would
24 maintain mortgage insurance for the loans in each offering with an LTV
25 ratio over a specified percentage. The originator often purchased the policy,
26 passing the cost onto individual buyers. For example, the Offering Materials
27 for CWHL 2007-15 provided:

1 Generally, each mortgage loan with a Loan-to-Value Ratio at
2 origination of greater than 80% will be covered by a primary
3 mortgage guaranty insurance policy issued by a mortgage
4 insurance company acceptable to Fannie Mae or Freddie Mac.
5 The policy provides coverage in an amount equal to a specified
6 percentage times the sum of the remaining principal balance of
7 the related mortgage loan, the accrued interest thereon and the
8 related foreclosure expenses.

9 . . .

10 The primary mortgage guaranty insurance policy will be
11 maintained for the life of the lender acquired mortgage
12 insurance mortgage loans, unless otherwise provided in the
13 mortgage note or prohibited by law.

14 CWHL 2007-15 Prospectus Supplement at S-37. The Offering Materials for
15 26 of the securitizations at issue in this action contained substantially similar
16 disclosures. *See* Exhibit H.

17 261. Sometimes the trust – as opposed to the lender – was required
18 to purchase mortgage insurance. For example, the Offering Materials for
19 CWL 2007-11 provided:

20 It is expected that the Mortgage Loans generally will not carry
21 borrower-paid mortgage insurance. The Trust Fund will
22 acquire a mortgage insurance policy (the “Mortgage Insurance
23 Policy”) from Mortgage Guaranty Insurance Corporation (the
24 “Mortgage Insurer”). The policy is expected to cover
25 approximately 31.71% and 23.73% of the Mortgage Loans with
26 Loan-to-Value Ratios at origination in excess of 80% in the
27 Statistical Calculation Pool in respect of Loan Group 1 and

1 Loan Group 2, respectively (in each case by principal balance)
2 (each such insured Mortgage Loan, a “Covered Mortgage
3 Loan”). The Mortgage Insurance Policy will only cover losses
4 pursuant to the formula described in the policy down to
5 approximately 60% of the value of the related Mortgaged
6 Property. The premium payable on the Mortgage Insurance
7 Policy to the extent applicable to the Covered Mortgage Loans
8 (the “Mortgage Insurance Premium”) will be paid monthly by
9 the Co-Trustee with funds withdrawn from the Distribution
10 Account as provided in the Pooling and Servicing Agreement
11 and the Mortgage Insurance Policy.

12 CWL 2007-11 Prospectus Supplement at S-47.

13 262. These statements were materially false and misleading because
14 Countrywide did not disclose in the Offering Materials that it would not
15 allow any insurer to provide mortgage insurance unless that insurer agreed to
16 pay kickbacks that are illegal under the Real Estate Settlement Procedures
17 Act of 1974 (“RESPA”).

18 263. Countrywide utilized its captive insurer, Balboa Reinsurance
19 Company, in order to circumvent the prohibition against kickbacks in
20 RESPA.

21 264. In addition to MGIC, Countrywide used Genworth Mortgage
22 Insurance Corporation, Radian Guaranty Inc., United Guaranty Residential
23 Insurance Company, Triad Guaranty Insurance Company and Republic
24 Mortgage Insurance (collectively, the “PMI Insurers”) as mortgage insurers
25 in connection with mortgage loans it originated and serviced including the
26 bulk of the mortgage loans underlying the offerings subject to this action.
27

1 265. At all relevant times, each of the PMI Insurers was authorized
2 to do business in Ohio.

3 266. Whether paid for by the borrowers or the trusts, many of the
4 properties covered by the mortgage insurance policies are located in Ohio.
5 For example, CWHL 2007-15 included 59 loans originated in Ohio with
6 \$6.8 million of principal balance. The CWHL 2007-15 Prospectus
7 Supplement disclosed that the weighted average LTV of these loans was
8 87.5%. Because the average LTV for the Ohio loans was over 80%, most, if
9 not all, of the Ohio loans required mortgage insurance.

10 267. Similarly, CWL 2007-11 included 29 loans with a principal
11 loan balance of \$3.5 million were originated in Ohio. The CWL 2007-11
12 Prospectus Supplement disclosed that the weighted average LTV of these
13 loans was 84.8%. Because the average LTV for the Ohio loans was over
14 80%, most, if not all, of the Ohio loans required mortgage insurance.

15 268. In September 2011, the *American Banker* issued a series of
16 reports of an investigation by HUD Inspector General that uncovered illegal
17 reinsurance arrangements, including sham reinsurance contracts entered into
18 by Balboa. The *American Banker* reports included interviews with the
19 current HUD Inspector General, Michael Stephens, and former HUD
20 officials including a former HUD Inspector General, Ken Donohue.
21 Donohue confirmed that the HUD had uncovered criminal conduct and
22 referred the case to the United States Department of Justice for criminal
23 prosecution.

24 269. The HUD sources quoted by the *American Banker* explained
25 how the scheme worked. Countrywide used its leverage as one of the
26 Nation's largest lenders to force all of its PMI insurers to pay Countrywide
27 for the opportunity to provide mortgage insurance to insure against potential

1 default under loans originated by Countrywide that required such insurance.
2 Because kickbacks of these types are illegal under RESPA, Countrywide
3 disguised them by entering into sham reinsurance contracts.

4 270. The PMI insurers were forced to remit to Balboa Reinsurance
5 approximately 40% of the premiums earned under mortgage insurance
6 policies. However, the reinsurance policies did not require Balboa to accept
7 40% of the losses under the policies. Balboa was only required to accept a
8 maximum of 10% of the losses and those losses were subject to the
9 mortgage insurers accepting the first 4% of loss. These so-called “4-10-40”
10 deals were not legitimate reinsurance. They were sham reinsurance
11 contracts because Countrywide did not assume real risk under the
12 reinsurance contracts.

13 271. The mortgage insurance placed in CWL 2007-1 with MGIC
14 was subject to Balboa’s “4-10-40” reinsurance deal with Balboa. As
15 reported by the *American Banker*, in 2003 MGIC attempted to stop
16 Countrywide’s use of these sham reinsurance contracts. However,
17 Countrywide cut off its business with MGIC and MGIC was forced to relent
18 and agree to continue the sham reinsurance arrangements. Ultimately, the
19 scheme evolved such that Balboa took no economic risk.

20 272. The *American Banker* reported that it had been granted access
21 to documents that revealed that Countrywide’s actuaries who reviewed
22 Balboa’s reinsurance agreement entered into between 2005 through 2007
23 determined that there was no reasonable possibility of loss under the
24 reinsurance agreements and, as a result, no risk transfer. These actuaries
25 also determined that no loss reserve associated with Balboa’s sham
26 reinsurance agreements needed to be established.

1 273. Countrywide described the following arrangement in its Form
2 10-K for 2005:

3 We provide a mezzanine layer of reinsurance coverage for
4 losses between minimum and maximum specified amounts to
5 the insurance companies that provide primary mortgage
6 insurance (“PMI”) on loans in our servicing portfolio. We
7 provide this coverage with respect to substantially all of the
8 loans in our portfolio that are covered by PMI, which generally
9 includes all conventional loans with an original loan amount in
10 excess of 80% of the property’s appraised value. In return for
11 providing this coverage, we earn a portion of the PMI
12 premiums.

13 274. Countrywide made similar disclosures in its Form 10-K for
14 2006 and 2007.

15 275. According to Countrywide’s Form 10-Ks, Balboa collected
16 \$180.7 million in kickbacks in 2005, \$223.6 million in 2006, and \$288.5
17 million in 2007. During the same period, Balboa incurred negligible levels
18 of claim expense. In 2005 and 2006, Balboa recorded claims expense of
19 only 17% and 16% respectively, the bulk of which was likely due to ceding
20 commissions paid to the insurers in a cash round trip that was necessary to
21 disguise the sham transactions. Even the most profitable reinsurance
22 companies experience much higher claim payments relative to earned
23 premiums.

24 276. Countrywide’s no-risk transfer deals encouraged its
25 abandonment of underwriting guidelines. According to industry expert
26 Joshua Rosner, managing director of Graham Fisher & Co., the deals “gave
27 the banks a false sense of confidence that they did not need to pay attention

1 to underwriting standards.” The more faulty loans it could originate the
2 more it could earn from sham reinsurance contracts.

3 **XI. COUNTRYWIDE ENGAGED IN BANK FRAUD**

4 277. Countrywide has engaged in numerous acts of bank fraud,
5 including against the Federal Home Loan Bank (“FHLB”) of Pittsburgh and
6 FHLB of Chicago, Fannie Mae, Freddie Mac, and Countrywide Bank,
7 Countrywide’s affiliated source of funding unsecured mortgage loans.

8 278. Each of FHLB of Pittsburgh, FHLB of Chicago, Fannie Mae,
9 Freddie Mac, and Countrywide Bank is a financial institution under 18
10 U.S.C. § 1344 (Bank Fraud).

11 279. The conduct of the Defendants in connection with sales of
12 mortgage-backed securities to FHLB of Pittsburgh, FHLB of Chicago,
13 Fannie Mae, and Freddie Mac substantially mirrors the conduct set forth
14 herein and is further described in complaints filed by each of those financial
15 institutions. *See Fed. Home Loan Bank of Pittsburgh v. Countrywide Secs.*
16 *Corp.*, 09-cv-1520 (U.S.D.C. Western Dist. Pa. Nov. 13, 2009); *Federal*
17 *Home Loan Bank of Chicago v. Banc of Am.*, 10-2-36526-5 (King County,
18 WA); *Federal Housing Finance Agency, as Conservator for the Federal*
19 *National Mortgage Association and the Federal Home Loan Mortgage*
20 *Corporation v. Countrywide Financial Corp. et al.*, 1:11-cv-06916
21 (S.D.N.Y.).

22 280. The mortgage-backed securities sold to Fannie Mae include
23 certificates from the CWALT 2006-14CB and CWALT 2007-5CB offerings,
24 which are at issue in this case.

25 281. Countrywide also defrauded Countrywide Bank, its affiliated
26 source of funding for billions of dollars of mortgage loans that had yet to be
27 securitized and foisted on unsuspecting investors like Western & Southern.

1 282. Between December 2005 and December 2007, unsecuritized
2 Countrywide loans financed by Countrywide Bank increased from \$8 billion
3 to an astounding \$212 billion. Countrywide thereby massively defrauded its
4 affiliated financial institution by deliberately exposing it to the very same
5 shoddy underwriting practices as it did investors like Western & Southern.

6 **XII. WESTERN & SOUTHERN'S DETRIMENTAL RELIANCE**
7 **AND DAMAGES**

8 283. In investing in the Certificates, Western & Southern relied upon
9 Defendants' representations and assurances regarding the quality of the
10 mortgage collateral underlying the Certificates, including the quality of the
11 underwriting processes and the assignment of the underlying mortgage
12 loans. Western & Southern received, reviewed, and relied upon the Offering
13 Materials, which described in detail the mortgage loans underlying each
14 offering.

15 284. In purchasing the Certificates, Western & Southern justifiably
16 relied on Defendants' false representations and omissions of material fact
17 detailed above, including the misstatements and omissions in the Offering
18 Materials. These representations materially altered the total mix of
19 information upon which Western & Southern made its purchasing decisions.

20 285. But for the misrepresentations and omissions in the Offering
21 Materials, Western & Southern would not have purchased or acquired the
22 Certificates as it ultimately did.

23 286. The false and misleading statements of material facts and the
24 omissions of material facts in the Offering Materials directly caused Western
25 & Southern damage, because the Certificates were far riskier than
26 Defendants described, and for that reason, far less valuable than the prices
27 paid by Western & Southern. The loans underlying the Certificates

1 experienced default and delinquency at extraordinarily high rates due to the
2 abandonment of the disclosed underwriting guidelines. And when the
3 inevitable defaults followed, many of the underlying loans could not be
4 foreclosed upon because Defendants failed to assign the mortgages properly.

5 287. Numerous brokers are now active in making a secondary
6 market for mortgage-backed securities, including Bank of America or its
7 affiliates.

8 288. Western & Southern has seen substantial losses in the market
9 value of its Certificates. Further, the income and principal payments that
10 Western & Southern received have been less than Western & Southern
11 expected under the “waterfall” provisions of the securitizations.

12 289. The drastic and rapid loss in value of Western & Southern’s
13 Certificates was primarily and proximately caused by the issuance of loans
14 to borrowers who could not afford them, in contravention of underwriting
15 guidelines described in the Offering Materials, and by the failure to assign
16 mortgage loans to each trust in a manner sufficient to allow the trust to
17 foreclose upon the underlying property in the event of a default.

18 **XIII. LIABILITY OF SPONSOR, DEPOSITORS, AND**

19 **UNDERWRITERS AS SELLERS OF SECURITIES OR SALE** 20 **PARTICIPANTS**

21 290. Defendants are sellers of securities or participants in the sale of
22 securities under the Ohio Securities Act, including the sponsor (Countrywide
23 Home Loans), the four depositors (CWALT, CWABS, CWHEQ and
24 CWMBBS), the three underwriters (Countrywide Securities, Credit Suisse
25 Securities, and Deutsche Bank Securities), and eight the Officer Defendants
26 (Defendants Mozilo, Sambol, Sieracki, Kripalani, Kurland, Spector, Adler,
27

1 and Sandefur). Each is liable for misrepresentations in Offering Materials
2 under ORC §§ 1707.41, 1707.43, 1707.44.

3 291. As the sponsor for the securitizations at issue, Countrywide
4 Home Loans originated or acquired the mortgage loans that were pooled
5 together in the securitizations, and then sold, transferred, or otherwise
6 conveyed title to those loans to the depositors pursuant to Pooling and
7 Servicing Agreements. Countrywide Home Loans had responsibility for
8 preparing the Offering Materials that were used to solicit purchases of the
9 Certificates and were identified on the Prospectuses and Prospectus
10 Supplements. Countrywide Home Loans profited from the sales of the
11 Certificates.

12 292. The depositors purchased the mortgage loans from the sponsor
13 pursuant to the Pooling and Servicing Agreements. The depositors then
14 purportedly sold, transferred, or otherwise conveyed the mortgage loans to
15 the Trusts, which held the loans as collateral for the Certificates. The
16 depositors shared responsibility for preparing the Offering Materials that
17 were used to solicit purchases of the Certificates, and were identified on the
18 Prospectuses and Prospectus Supplements. In addition, the depositors were
19 responsible for registering the offerings with the SEC. The depositors
20 profited from the sales of the Certificates.

21 293. The trusts issued the Certificates that were sold to investors,
22 including Western & Southern. The trusts had beneficial interest in any
23 assets and were mere vehicles for purposes of holding the pools of mortgage
24 loans assembled by the sponsors and depositors, and issuing the Certificates
25 for sale to the investors.

26 294. The Countrywide Defendants took all steps necessary to
27 facilitate the securitization transactions including approving such

1 transactions and directing the creation of the securitization trusts and related
2 SEC filings.

3 295. The underwriters marketed and sold the Certificates on behalf
4 of the sponsor and the trusts. The underwriters were responsible for
5 managing the sale of the Certificates, including screening the mortgage loans
6 for compliance with the appropriate underwriting guidelines. The
7 underwriters also participated in the preparation of the Offering Materials.
8 The underwriters profited from the sales of the Certificates.

9 296. The sponsors, the depositors, the underwriters, and the Officer
10 Defendants successfully solicited Western & Southern's purchase of the
11 Certificates at issue.

12 **XIV. DEFENDANTS' LIABILITY AS CONTROL PERSONS**

13 297. *Countrywide Financial as Control Person.* Countrywide
14 Financial operated its consolidated subsidiaries as a collective enterprise,
15 making significant strategic decisions for its subsidiaries, monitoring
16 enterprise-wide risk, and maximizing profit for Countrywide Financial's
17 executives and shareholders. As reported in Countrywide Financial's 2003
18 Form 10-K, although mortgage banking remained Countrywide Financial's
19 "core business," it had expanded operations in recent years "to capitalize on
20 meaningful opportunities to leverage [its] core Mortgage Banking business
21 and to provide sources of earnings that are less cyclical than the mortgage
22 banking business." In other words, in conjunction with its goal of
23 prioritizing the origination of loans regardless of the risk of default,
24 Countrywide developed its own "in-house" subsidiaries to facilitate its
25 ability to package and sell these risky products.

26 298. Countrywide Financial managed Countrywide's enterprise-
27 wide risks, strategic direction, and business operations through executive

1 committees. These committees included the Executive Strategy Committee,
2 the Corporate Credit Risk Committee, the Corporate Enterprise Risk
3 Committee, and the Asset/Liability Committee.

4 299. ***The Executive Strategy Committee.*** The members of the
5 Executive Strategy Committee included four Officer Defendants: Mozilo,
6 Sambol, Sieracki, and Kurland. They were responsible for defining and
7 assessing Countrywide's enterprise-wide strategic direction and risk. The
8 Committee's activities included developing Countrywide Financial's
9 strategic plan and reviewing the strategic plans of each of Countrywide
10 Financial's divisions, to ensure consistency and proper strategic alignment.

11 300. ***The Corporate Credit Risk Committee and The Corporate***
12 ***Enterprise Risk Committee.*** The Corporate Credit Risk Committee and the
13 Corporate Enterprise Risk Committee interfaced directly with the Credit
14 Committee within Countrywide Financial's Board of Directors, assessed the
15 risks to which the Countrywide enterprise was exposed and decided which
16 risks Countrywide Financial should sell or otherwise mitigate. The Credit
17 Risk group was also responsible for managing fraud prevention and
18 investigation. Sieracki and Kurland were both members of the Corporate
19 Credit Risk Committee.

20 301. ***The Asset/Liability Committee.*** The Asset/Liability Committee
21 was responsible for addressing market risk for the Countrywide enterprise,
22 across all Countrywide Financial subsidiaries. The Asset/Liability
23 Committee engaged in extensive modeling for the performance of
24 Countrywide Financial's various financial products, and maintained a
25 dedicated Model Validation Subcommittee for that purpose. Five Officer
26 Defendants, Mozilo, Sambol, Kurland, Sandefur, and Sieracki, were
27

1 members of the Asset/Liability Committee, and Sieracki became the acting
2 Chairman of the committee in February 2006.

3 302. Through the use of these committees and others, as well as
4 regular communication with and among its subsidiaries and regular reporting
5 regarding the performance of divisions across the enterprise, Countrywide
6 Financial maintained a high level of day-to-day scrutiny and control over its
7 subsidiaries. Countrywide Financial controlled the guidelines for loan
8 origination, decided which assets to sell and which to hold for its own
9 investment portfolio by being advised of the quality of the underwriting and
10 the loans originated, set protocols for servicing the vast portfolio of loans for
11 which it had retained servicing rights and approved the manner in which it
12 sold the loans it elected to securitize.

13 303. ***Countrywide Capital Markets as Control Person.***

14 Countrywide Capital Markets exercised a high level of day-to-day control
15 over its subsidiary, Countrywide Securities. Countrywide Securities
16 received directives from Countrywide Financial via Kripalani and
17 Countrywide Capital Markets. Kripalani, who was the President and CEO
18 of both entities, ensured that Countrywide Securities followed the priorities
19 and practices established by Countrywide Financial and Countrywide
20 Capital Markets.

21 304. As the division charged with marketing the loans originated and
22 acquired by Countrywide Home Loans, Countrywide Capital Markets also
23 exercised control over the Depositors and, through the Depositors, over the
24 Trusts. Along with Countrywide Financial, Countrywide Capital Markets
25 determined and approved the manner in which Countrywide Securities and
26 the Trusts selected and sold the securitized loans in the Certificate Offerings,
27 and controlled the disclosures made in connection with each securitization.

1 305. ***Mozilo as Control Person.*** Mozilo had the power to control
2 and influence, and did in fact control and influence, all of the business
3 operations of Countrywide Financial and its subsidiaries. Mozilo had the
4 power to control and influence, and did control and influence, Countrywide
5 Financial and Countrywide Home Loans. Mozilo also had the power to
6 control and influence, and did control and influence, primary violator
7 Countrywide Securities, a wholly-owned Countrywide Financial subsidiary.

8 306. Mozilo directly supervised Sambol, who was the direct
9 supervisor of Kripalani during Kripalani's tenure as President, Chief
10 Executive Officer, and Managing Director of Countrywide Securities.
11 Kripalani provided Sambol with regular business updates regarding
12 Countrywide Securities, and Sambol shared and discussed this information
13 with Mozilo. As Sambol's supervisor, Mozilo had the power to control and
14 did control Countrywide Securities.

15 307. Mozilo exercised his control and influence through senior
16 management meetings. For example, Countrywide Financial's management
17 held monthly "Business Review" meetings attended by Mozilo and other
18 senior executives. During these meetings, the operations and performance
19 of each Countrywide entity were evaluated and discussed in great detail.
20 Mozilo and the rest of the senior management team set the course for
21 Countrywide Financial's various businesses including the business of
22 Countrywide Securities.

23 308. In numerous public statements, Mozilo portrayed himself as the
24 face of Countrywide Financial and conveyed that he spoke on behalf of
25 Countrywide Financial and all of its subsidiaries. Mozilo exercised his
26 control and influence over Countrywide Financial and other Countrywide
27 entities by signing Countrywide Financial documents filed with the SEC.

1 These documents include Countrywide Financial's Form 10-Ks for the years
2 2003, 2004, 2005, and 2006.

3 309. Mozilo controlled and influenced Countrywide Financial and its
4 subsidiaries through membership on several Countrywide Financial
5 management and Board of Directors committees. He was a member of at
6 least the Executive Strategy Committee, the Finance Committee, and the
7 Credit Committee.

8 310. Through his membership of Countrywide Financial committees
9 and its board, Mozilo kept apprised of developments in the business
10 practices of Countrywide Financial and its subsidiaries, and exercised
11 control and influence over Countrywide Financial's entire business.

12 311. Mozilo's ability to control and influence Countrywide Financial
13 and its subsidiaries is further evidenced by his central role in bringing about
14 the transformation of Countrywide Financial from a mortgage company with
15 conservative underwriting policies into a loan-originating machine that
16 ignored its own underwriting guidelines and took on increasingly risky
17 loans. Mozilo directed Sambol to initiate this sweeping change, and he
18 aggressively pushed Countrywide Financial into numerous new product
19 offerings that changed the risk profile for the loans Countrywide issued.

20 312. Mozilo's control and influence of Countrywide Financial and
21 its subsidiaries was further evidenced by his close involvement in the daily
22 management of all aspects of Countrywide Financial's core operations. This
23 included approving and overseeing Countrywide Financial's and
24 Countrywide Home Loans' mortgage and loan product offerings – the very
25 same mortgages and loans that were packaged together for the Certificates.

26 313. Mozilo exercised his power to control and influence
27 Countrywide Financial and its subsidiaries through his involvement in

1 developing, modifying, and implementing Countrywide Financial's
2 guidelines for making and underwriting new loans and mortgages. Mozilo
3 acknowledged that "I participate every day in originations myself, and it
4 keeps me apprised of what's happening."

5 314. Mozilo exercised his control and influence over Countrywide
6 Financial and its subsidiaries through his participation in all areas of
7 Countrywide's business, including the activities of Countrywide Securities.
8 For example, Mozilo exerted influence over various governance
9 responsibilities relating to Countrywide Financial's "matching" strategy,
10 including committee supervision and responsibility for (1) guideline review
11 and verification; (2) surveillance; (3) pricing and valuation; (4) monitoring
12 and economic conditions; (5) servicing coordination; and (6) Countrywide
13 Financial's subprime market position.

14 315. Mozilo decided not to intervene with respect to the loans
15 included in the securitizations at issue even after he became aware that
16 Sambol was directing Countrywide Securities to securitize pools of loans
17 that featured extreme risk. Mozilo knew the loans of deteriorating quality
18 were being included and allowed the inclusion of these loans to continue.

19 316. It was well known within Countrywide Financial that Mozilo
20 had such extensive control and influence over the loan and origination
21 practices that he was personally responsible for instigating breaches in
22 protocol on numerous occasions. For example, Mozilo personally approved
23 loans that did not meet the applicable guidelines, including a loan internally
24 flagged as "unsalable" because of a debt-to-income ratio of 89%; a loan for a
25 high-profile borrower "on a reduced doc basis as in the past"; and a loan for
26 that high-profile customer with 100% loan-to-value financing in July 2004.

1 317. Mozilo's control and influence resulted in company-wide weak
2 controls and procedures with respect to loan approval. Countrywide
3 Financial employees acknowledged that Mozilo's practice of personally
4 approving loans for friends violated the stated requirements for obtaining a
5 loan. Mozilo personally controlled the risky practices about which he and
6 others at Countrywide lied to the public.

7 318. ***Sambol as Control Person.*** As set forth in above, Sambol had
8 numerous positions and roles within Countrywide.

9 319. By virtue of his senior management positions, Sambol had the
10 power to control and influence, and did control and influence, Countrywide
11 Financial and Countrywide Home Loans. Sambol had the power to control
12 and influence, and did control and influence, primary violator Countrywide
13 Securities, a wholly-owned Countrywide Financial subsidiary.

14 320. Sambol was the direct supervisor for Kripalani during
15 Kripalani's tenure as President, Chief Executive Officer, and Managing
16 Director of Countrywide Securities. Kripalani provided Sambol with regular
17 business updates regarding Countrywide Securities, and Sambol provided
18 direction to Kripalani regarding Countrywide Securities' business. Sambol
19 had the power to control and influence, and did control and influence,
20 Countrywide Securities in his role as Kripalani's supervisor.

21 321. In numerous public statements, Sambol portrayed himself as a
22 public face of Countrywide Financial and its subsidiaries, and conveyed that
23 he spoke on behalf of Countrywide Financial, Countrywide Home Loans and
24 Countrywide Financial's other subsidiaries (including Countrywide
25 Securities). Many of these representations were untrue for the same reasons
26 the representations at issue in this case were untrue.

1 322. Sambol also exercised his authority to control and influence
2 Countrywide Financial and other Countrywide entities by signing numerous
3 materially false and misleading Countrywide Financial documents filed with
4 the SEC. These documents include Countrywide Financial's: (1) Form 10-
5 Q filed on November 7, 2006; (2) Form 10-Q filed on May 9, 2007; (3)
6 Form 10-Q filed on August 9, 2007; and (4) Form 10-Q filed on November
7 9, 2007.

8 323. Sambol's ability to control and influence Countrywide
9 Financial and its subsidiaries is further evidenced by his central role in
10 bringing about the sweeping change that transformed Countrywide Financial
11 from a mortgage company with conservative underwriting policies into a
12 loan-originating entity that ignored its own historical underwriting
13 guidelines and originated increasingly risky loans. Sambol began this
14 change in 2003 and aggressively pushed Countrywide Financial into
15 numerous new product offerings that altered the risk profile of the loans
16 Countrywide issued.

17 324. Sambol's ability to control and influence Countrywide
18 Financial and its subsidiaries was evidenced by his close involvement in the
19 daily management of Countrywide's operations. This included his creating,
20 approving, and overseeing Countrywide Financial's mortgage and loan
21 product offerings through its subsidiary Countrywide Home Loans –
22 including loans that were packaged together for the securitizations at issue in
23 this case.

24 325. Sambol had the power to control and influence, and did control
25 and influence, Countrywide Financial, Countrywide Home Loans, and
26 Countrywide Financial's other subsidiaries through his heavy involvement
27 with developing, modifying, and implementing guidelines for making and

1 underwriting new loans and mortgages. Others within Countrywide
2 routinely acknowledged that Sambol had the ultimate approval power for
3 relaxing guideline requirements for issuing new loans and implementing any
4 Countrywide programs relating to exceptions processes. Sambol created the
5 Exception Processing System, which was a computer system designed to
6 approve exception loans routinely, even though they did not satisfy even the
7 relaxed underwriting criteria. Sambol also was responsible for changing
8 credit-score cut-offs under Countrywide's underwriting guidelines.

9 326. Sambol had the power to control and influence, and did control
10 and influence, Countrywide Financial and its subsidiaries (including
11 Countrywide Securities and the Trusts) through his membership on several
12 Countrywide Financial management and Board of Directors committees.
13 Sambol was a member of at least the Executive Strategy Committee, the
14 Asset/Liability Committee, the Finance Committee, the Audit and Ethics
15 Committee, and the Committee to Set Loan Loss Allowance. Through his
16 committee and Board memberships, Sambol was a key member of the
17 Countrywide decision-making team.

18 327. Sambol's participation in the Countrywide Financial
19 committees and the Board also kept him apprised of developments in the
20 business practices of Countrywide Financial and its subsidiaries (including
21 Countrywide Securities and the Trusts) and afforded him further control and
22 influence over Countrywide Financial's entire business, including the
23 business of Countrywide Securities and other Countrywide subsidiaries.

24 328. Sambol exercised his control and influence on numerous
25 occasions. For example, Sambol mandated a series of changes to the
26 subprime mortgage business at Countrywide Financial and Countrywide
27 Home Loans. At Sambol's direction, Countrywide Financial and

1 Countrywide Home Loans greatly expanded their roles in the subprime
2 mortgage business despite warnings from employees that these loans were
3 too risky. The subprime mortgage market expansion is but one example of
4 what everyone at Countrywide knew – if Sambol wanted a change to any
5 Countrywide program (whether at Countrywide Financial, Countrywide
6 Home Loans, Countrywide Securities, or any other Countrywide entity),
7 then Sambol would be able to effect the change because of his control and
8 influence.

9 329. Sambol was the highest-ranking person to involve when issues
10 arose in obtaining loan approval. Account executives at Countrywide Home
11 Loans told their subordinates to take an underwriter's decision not to
12 approve the loan to Sambol to get the deal done. Account executives and
13 their subordinates recognized that Sambol had the power to approve any
14 risky loan at Countrywide Financial or Countrywide Home Loans.

15 330. Sambol threatened to fire subordinates unless they devised new
16 ways for Countrywide Financial and Countrywide Home Loans to make
17 money, including by pushing risky loan products. Sambol pressured
18 employees to price risky loans in a way that would not take into account the
19 extent of the risk that the loans actually presented and would overstate the
20 value of the loans. Sambol also pressured employees to relax underwriting
21 guidelines to enable increased production of risky loans. Because of
22 Sambol's ability to control and influence Countrywide Financial and its
23 subsidiaries, employees solicited, approved, and issued the risky loans that
24 Sambol wanted.

25 331. Through his ability to control and influence Countrywide
26 Financial and its subsidiaries, Sambol repeatedly crushed dissenting voices
27 within Countrywide regarding the ever-increasing risks of its mortgage

1 programs. For example, when employees raised concerns regarding
2 increases in delinquencies, Sambol consistently pushed for risky loan
3 products and downplayed or ignored concerns. Sambol also used his control
4 and influence to exclude individuals who managed and oversaw the credit
5 risk positions from the decision-making process. As a result of Sambol's
6 actions, Countrywide Financial and Countrywide Home Loans continued
7 their pursuit of risky loan products from 2003 through 2008.

8 332. Sambol spearheaded the "lunge for growth" with respect to
9 subprime mortgages that were inherently risky. He brushed aside warnings
10 from risk-control managers that underwriting standards were too lax, stating
11 that being too cautious would turn Countrywide Financial and its
12 subsidiaries into a "nice, little boutique." Sambol pushed a policy of
13 offering nearly the entire range of excessively risky mortgage products
14 available in the market, including 100% financing, 80/20 loans, and low-doc
15 and no-doc loans for borrowers with weak credit, and through his control
16 Sambol was able to implement this policy throughout Countrywide.

17 **XV. BANK OF AMERICA'S LIABILITY AS SUCCESSOR IN**
18 **INTEREST BY DE FACTO MERGER**

19 333. On January 11, 2008, Bank of America announced that it would
20 purchase Countrywide Financial for \$4.1 billion.

21 334. On July 1, 2008, Bank of America completed its merger with
22 Defendant Countrywide Financial.

23 335. On June 28, 2011, Bank of America announced that it would
24 settle for \$8.5 billion with BNY, as trustee for Countrywide mortgage-
25 backed security trusts. *See* Bank of America Corp., Form 8-K at 2 (June 29,
26 2011).

1 336. Bank of America's Form 10-Q for the period ending September
2 3, 2009, reported that: "On July 1, 2008, [Bank of America] acquired
3 Countrywide through its merger with a subsidiary of the Corporation. . . .
4 The acquisition of Countrywide significantly expanded the Corporation's
5 mortgage originating and servicing capabilities, making it a leading
6 mortgage originator and servicer." According to the 10-Q, "Countrywide's
7 results of operations were included in the Corporation's results beginning
8 July 1, 2008."

9 337. On July 3, 2008, Countrywide Home Loans completed the sale
10 of some or substantially all of its assets to NB Holdings Corporation, a
11 wholly-owned subsidiary of Bank of America used to effectuate the merger
12 between Countrywide Financial and Bank of America. NB Holdings
13 Corporation is Countrywide Home Loans' successor.

14 338. Countrywide Financial transferred substantially of its assets to
15 Bank of America on November 7, 2008. Around that time, Countrywide
16 Financial ceased filing its own financial statements, instead including its
17 assets and liabilities on Bank of America's financial statements.

18 339. At the time of the November 2008 transactions, Countrywide
19 Bank, FSB was the largest Countrywide subsidiary. Countrywide's 2007
20 10-K revealed that "as of December 31, 2007, over 90% of [Countrywide's]
21 monthly mortgage loan production occurred in Countrywide Bank" and that
22 as of January 1, 2008 Countrywide's "production channels ha[d] moved into
23 the Bank, completing the migration of substantially all of [Countrywide's]
24 loan production activities from CHL to the Bank." See Countrywide
25 Financial Corporation Form 10-K (Feb. 29, 2008). By transferring to itself
26 Countrywide Bank, FSB, along with substantially all of the assets of
27 Countrywide Home Loans, Bank of America left the remaining Countrywide

1 entities with only illiquid assets, no ongoing business, no ability to generate
2 revenue, and insufficient assets to satisfy their contingent liabilities. This
3 conclusion is echoed by Bruce Bingham (who prepared a report on behalf of
4 BoNY, trustee for Countrywide-issued residential mortgage-backed
5 securities, attempting to value Countrywide Financial) who found that
6 Countrywide Financial “has negative earnings,” “minimal operating
7 revenues,” “does not originate, securitize, or service real estate loans” and
8 “has no operations that by themselves are economically viable on a go
9 forward basis.”

10 340. The transactions between Countrywide and Bank of America
11 were intentionally structured so that Countrywide’s massive contingent
12 liabilities relating to its mortgage origination, securitization, and servicing
13 practices remained with Countrywide, while all of its assets and businesses
14 that generated revenue were sold to Bank of America, thus leaving
15 Countrywide unable to satisfy these liabilities. Not only did Bank of
16 America control the Countrywide entities at the time these transactions were
17 entered into, but Bank of America did not provide adequate consideration
18 for the assets it received from Countrywide. In other words, in self-dealing
19 transactions, and in exchange for inadequate consideration, Bank of America
20 intentionally rendered Countrywide insolvent and unable to satisfy its
21 creditors. Moreover, Bank of America was fully aware of Countrywide’s
22 contingent liabilities when it transferred these assets out of Countrywide.
23 For example, in an interview published on February 22, 2008 in the legal
24 publication Corporate Counsel, a Bank of America spokesperson
25 acknowledged Countrywide’s liabilities:

26 Handling all this litigation won’t be cheap, even for Bank of
27 America, the soon-to-be largest mortgage lender in the country.

1 Nevertheless, the banking giant says that Countrywide's legal
2 expenses were not overlooked during negotiations. 'We bought
3 the company and all of its assets and liabilities,' spokesman
4 Scott Silvestri says. 'We are aware of the claims and potential
5 claims against the company and have factored these into the
6 purchase.'

7 *See* Amy Miller, Countrywide in Crosshairs as Mortgage Crisis Fuels
8 Litigation, Corporate Counsel, Feb. 22, 2008.

9 341. On April 27, 2009, Bank of America rebranded Countrywide
10 Home Loans as "Bank of America Home Loans." Many former
11 Countrywide locations, employees, assets, and business operations now
12 continue under the Bank of America Home Loans brand. On the Form 10-K
13 submitted by Bank of America on February 26, 2010, both Countrywide
14 Capital Markets, LLC and Countrywide Securities Corporation were listed
15 as Bank of America subsidiaries.

16 342. Countrywide Financial's former website now redirects to the
17 Bank of America website. Bank of America has assumed Countrywide
18 Financial's liabilities, having paid to resolve litigation arising from various
19 misconduct, such as predatory lending by Countrywide Financial.

20 343. Countrywide Financial and its subsidiaries, which include each
21 of the Countrywide Defendants, have now been merged into Bank of
22 America. Bank of America is liable for the wrongdoing of the Countrywide
23 Defendants, because it is the successor-in-interest to each of the
24 Countrywide Defendants.

25 344. Following its merger with Countrywide Financial, Bank of
26 America took steps to expressly and impliedly assume Countrywide
27 Financial's liabilities. Substantially all of Countrywide Financial's and

1 Countrywide Home Loans' assets were transferred to Bank of America on
2 November 7, 2008 "in connection with Countrywide's integration with Bank
3 of America's other businesses and operations," along with certain of
4 Countrywide's debt securities and related guarantees." According to the
5 Bank of America website, while the integration was being completed
6 "Countrywide customers . . . ha[d] access to Bank of America's 6,100
7 banking centers."

8 345. As is customary in large corporate mergers, at least some of the
9 Countrywide Defendants retained their pre-merger corporate names
10 following their merger with Bank of America. However, Countrywide
11 operations are being fully consolidated into Bank of America, and the
12 Countrywide entities will soon lose (if they have not already) any
13 independent identity they maintained following the merger. On April 27,
14 2009, Bank of America announced in a press release that "[t]he Countrywide
15 brand has been retired." Bank of America announced that it would operate
16 its home loan and mortgage business through a new division named Bank of
17 America Home Loans, which "represents the combined operations of Bank
18 of America's mortgage and home equity business and Countrywide Home
19 Loans."

20 346. The press release made clear that Bank of America planned to
21 complete its integration of Countrywide Financial into Bank of America in
22 2009. The press release explained that Bank of America was in the process
23 of rebranding former Countrywide "locations, account statements, marketing
24 materials and advertising" as Bank of America Home Loans, and stated that
25 "the full systems conversion" to Bank of America Home Loans would occur
26 later in 2009. "Bank of America Home Loans" is thus a direct continuation
27 of Countrywide's operations. Although the Bank of America Defendants

1 claim that Bank of America Home Loans is a “trade name” rather than a
2 separate legal entity, it is a Bank of America trade name and thus a part of
3 Bank of America.

4 347. As of September 21, 2009, former Countrywide bank deposit
5 accounts were reportedly converted to Bank of America accounts. On
6 November 9, 2009, online account services for Countrywide mortgages were
7 reportedly transferred to Bank of America’s Online Banking website.
8 According to press reports, Bank of America Home Loans will operate out
9 of Countrywide’s offices in Calabasas, California with substantially the
10 same employees as the former Countrywide entities.

11 348. Countrywide Financial ceased filing its own financial
12 statements in November 2008, and its assets and liabilities have been
13 included in Bank of America’s recent financial statements. Bank of
14 America has paid to restructure certain of Countrywide Financial’s home
15 loans on its behalf, including permitting Countrywide Financial and
16 Countrywide Home Loans to settle a predatory-lending lawsuit brought by
17 state Attorneys General and agreeing to modify up to 390,000 Countrywide
18 loans at a cost of up to \$8.4 billion.

19 349. Under the “Merger History” tab of Bank of America’s website,
20 Countrywide is included among the list of companies Bank of America has
21 acquired. Under the “Time Line” tab, the website states that Bank of
22 America “became the largest consumer mortgage lender in the country”
23 following its acquisition of Countrywide in 2008. Lastly, under the “Our
24 Heritage” tab, the website states that the acquisition of Countrywide
25 “resulted in the launch of Bank of America Home Loans in 2009, making
26 the bank the nation’s leading mortgage originator and servicer.”
27

1 350. Bank of America has described the transaction through which it
2 acquired Countrywide Financial and its subsidiaries as a merger and made
3 clear that it intended to integrate Countrywide Financial and its subsidiaries
4 into Bank of America fully by the end of 2009.

5 351. In a July 2008 Bank of America press release, Barbara Desoer,
6 identified as the head of the “combined mortgage, home equity and
7 insurance businesses” of Bank of America and Countrywide Financial, said:
8 “Now we begin to combine the two companies and prepare to introduce our
9 new name and way of operating.” The press release stated that the bank
10 “anticipates substantial cost savings from combining the two companies.
11 Cost reductions will come from a range of sources, including the elimination
12 of positions announced last week, and the reduction of overlapping
13 technology, vendor and marketing expenses. In addition, Countrywide is
14 expected to benefit by leveraging its broad product set to deepen
15 relationships with existing Countrywide customers.”

16 352. Desoer was also interviewed for the May 2009 issue of *Housing*
17 *Wire* magazine. The article reported that:

18 While the move to shutter the Countrywide name is essentially
19 complete, the operational effort to integrate across two
20 completely distinct lending and service systems is just getting
21 under way. One of the assets [Bank of America] acquired with
22 Countrywide was a vast technology platform for originating
23 and servicing loans, and Desoer says that the bank will be
24 migrating some aspects of [Bank of America’s] mortgage
25 operations over to Countrywide’s platforms.

26 353. Desoer was also quoted as saying: “We’re done with defining
27 the target, and we’re in the middle of doing the development work to prepare

1 us to be able to do the conversion of the part of the portfolio going to the
2 legacy Countrywide platforms.” Desoer explained that the conversion
3 would happen in the “late fall” of 2009, and that the integration of the
4 Countrywide Financial and Bank of America platforms was a critical goal.

5 354. After the integration had progressed further, Desoer stated in
6 the October 2009 issue of *Mortgage Banking* that “the first year is a good
7 story in terms of the two companies [coming] together and meeting all the
8 major [goals and] milestones that we had set for ourselves for how we would
9 work to integrate the companies.” For Desoer, it was “the highlight of the
10 year . . . when we retired the Countrywide brand and launched the Bank of
11 America Home Loans brand.” In the same issue, Mary Kanaga, a
12 Countrywide transition executive who helped oversee integration, likened
13 the process of integration to the completion of a mosaic: “Everything [*i.e.*,
14 each business element] counts. Everything has to get there, whether it’s the
15 biggest project of the smallest project. It’s very much putting a puzzle
16 together. If there is a missing piece, we have a broken chain and we can’t
17 complete the mosaic.”

18 355. In its 2008 Annual Report, Bank of America confirmed that
19 “[o]n July 1, 2008, we acquired Countrywide,” and stated that the merger
20 “significantly improved our mortgage originating and servicing capabilities,
21 making us a leading mortgage originator and servicer.” The Q&A section of
22 the same report posed the question: “How do the recent acquisitions of
23 Countrywide and Merrill Lynch fit into your strategy?” The Bank of
24 America response was that by acquiring Countrywide the bank became the
25 “No.1 provider of both mortgage originations and servicing” and “as a
26 *combined* company,” it would be recognized as a “responsible lender who is
27 committed to helping our customers become successful homeowners.”

1 (Emphasis added). Similarly, in a July 1, 2008 Countrywide Financial press
2 release, Defendant Mozilo stated that “the *combination* of Countrywide and
3 Bank of America will create one of the most powerful mortgage franchises
4 in the world.” (Emphasis added).

5 356. In purchasing Countrywide Financial and its subsidiaries for
6 27% of its book value, Bank of America was fully aware of the pending
7 claims and potential claims against Countrywide, and factored them into the
8 transaction. In an interview published on February 22, 2008 in the legal
9 publication *Corporate Counsel*, a Bank of America spokesperson admitted
10 that Bank of America had assumed Countrywide’s liabilities:

11 Handling all this litigation won’t be cheap, even for Bank of
12 America, the soon-to-be largest mortgage lender in the country.
13 Nevertheless, the banking giant says that Countrywide’s legal
14 expenses were not overlooked during negotiations. “*We bought*
15 *the company and all of its assets and liabilities,*” spokesman
16 *Scott Silvestri says. “We are aware of the claims and potential*
17 *claims against the company and have factored these into the*
18 *purchase.”*

19 (Emphasis added).

20 357. On October 6, 2008, during an earnings call, Joe Price, Bank of
21 America’s Chief Financial Officer, stated that “[a]s we transfer those
22 operations (*i.e.*, Countrywide Financial and its subsidiaries) our company
23 intends to assume the outstanding Countrywide debt totaling approximately
24 \$21 billion.” When asked about the “formal guaranteeing” of Countrywide’s
25 debt, Kenneth D. Lewis, Bank of America’s former Chairman and Chief
26 Executive Officer, responded that “[t]he normal process we followed is what
27 are the operational movements we’ll make to *combine the operations*. When

1 we do that we've said the debt would fall in line and quite frankly that's kind
2 of what we've said the whole time [T]hat's been very consistent with
3 deals we've done in the past from this standpoint." (Emphasis added).

4 358. Lewis was quoted in a January 23, 2009 *New York Times* article
5 reporting on the acquisition of Countrywide Financial and its subsidiaries, in
6 which he acknowledged that Bank of America knew of the legal liabilities of
7 Countrywide Financial and its subsidiaries and impliedly accepted them as
8 part of the cost of the acquisition:

9 We did extensive due diligence. We had 60 people inside the
10 company for almost a month. It was the most extensive due
11 diligence we have ever done. So we feel comfortable with the
12 valuation. We looked at every aspect of the deal, from their
13 assets to potential lawsuits and we think we have a price that is
14 a good price.

15 359. Bank of America has made additional statements showing that
16 it has assumed the liabilities of Countrywide. In a press release announcing
17 the merger, Lewis stated that he was aware of the "issues within the housing
18 and mortgage industries" and that "the transaction [with Countrywide]
19 reflects those challenges." Despite these challenges, Lewis stated in October
20 2009 that "[t]he Merrill Lynch and Countrywide integrations are on track
21 and returning value already."

22 360. Likewise, in its 2009 Form 10-K, Bank of America
23 acknowledged that "[W]e face increased litigation risk and regulatory
24 scrutiny as a result of the Merrill Lynch and Countrywide acquisitions."

25 361. Brian Moynihan, Bank of America's CEO and President,
26 testified before the Financial Crisis Inquiry Commission on January 13,
27 2010, that "our primary window into the mortgage crisis came through the

1 acquisition of Countrywide. The Countrywide acquisition has positioned the
2 bank in the mortgage business on a scale it had not previously achieved.
3 There have been losses, and lawsuits, from the legacy of Countrywide
4 operations, but we are looking forward.”

5 362. Addressing investor demands for refunds on faulty loans sold
6 by Countrywide, Moynihan stated: “There’s a lot of people out there with a
7 lot of thoughts about how we should solve this, but at the end of the day,
8 we’ll pay for the things that Countrywide did.” And, in a *New York Times*
9 article published in December 2010, Moynihan, speaking about
10 Countrywide, stated: “Our company bought it and we’ll stand up; we’ll
11 clean it up.”

12 363. Similarly, Jerry Dubrowski, a spokesman for Bank of America,
13 was quoted in a December 2010 *Bloomberg* article that the bank will “act
14 responsibly” and repurchase loans in cases where there were valid defects
15 with the loans. Through the third quarter of 2010, Bank of America has
16 faced \$26.7 billion in repurchase requests and has resolved, declined, or
17 rescinded \$18 billion of those claims. It has established a reserve fund
18 against the remaining \$8.7 billion in repurchase requests, which at the end of
19 the third quarter stood at \$4.4 billion.

20 364. During an earnings call for the second quarter of 2010, Charles
21 Noski, Bank of America’s Chief Financial Officer, stated that “we increased
22 our reps and warranties expense by \$722 million to \$1.2 billion as a result of
23 our continued evaluation of exposure to repurchases including our exposure
24 to repurchase demands from certain monoline insurers.” And during the
25 earnings call for the third quarter of 2010, Noski stated that “[t]hrough
26 September, we’ve received \$4.8 billion of reps and warranties claims related
27

1 to the monoline-insured deals, of which \$4.2 billion remains outstanding,
2 and approximately \$550 million were repurchased.”

3 365. Bank of America has reached various settlement agreements in
4 which it has taken direct responsibility for Countrywide’s liabilities. Bank
5 of America recently agreed to pay \$8.5 billion to settle put-back claims
6 relating to some of the Trusts.

7 366. As part of a settlement agreement with certain state Attorneys
8 General, Bank of America agreed to forgive up to 30 percent of the
9 outstanding mortgage balances owed by former Countrywide customers.
10 The loans were made before Bank of America acquired Countrywide.

11 367. In October 2010, the *New York Times* reported that Bank of
12 America is “on the hook” for \$20 million of the disgorgement that
13 Defendant Mozilo agreed to pay in his settlement agreement with the SEC.
14 The agreement and plan of merger between Bank of America and
15 Countrywide provided that all indemnification provisions “shall survive the
16 merger and shall continue in full force and effect . . . for a period of six
17 years.” According to the article, “[b]ecause Countrywide would have had to
18 pay Mozilo’s disgorgement, Bank of America took on the same obligation,
19 even though it had nothing to do with the company’s operations at the time.”

20 368. Bank of America has generated substantial earnings from the
21 absorption of Countrywide’s mortgage business. For example, a Bank of
22 America press release regarding 2009 first quarter earnings stated that “[n]et
23 revenue nearly quadrupled to \$5.2 billion primarily due to the acquisition of
24 Countrywide and from higher mortgage banking income as lower interest
25 rates drove an increase in mortgage activity.” Lewis was quoted as saying:
26 “We are especially gratified that our new teammates at Countrywide and
27

1 Merrill Lynch had outstanding performance that contributed significantly to
2 our success.”

3 369. A press release regarding Bank of America’s 2009 second
4 quarter earnings similarly stated that “[n]et revenue rose mainly due to the
5 acquisition of Countrywide and higher mortgage banking income as lower
6 interest rates spurred an increase in refinance activity.” The press release
7 explained that “higher mortgage banking income, trading account profits and
8 investment and brokerage services income reflected the addition of Merrill
9 Lynch and Countrywide.” Bank of America reported that its average retail
10 deposits in the quarter increased \$136.3 billion, or 26 percent, from a year
11 earlier, including \$104.3 billion in balances from Merrill Lynch and
12 Countrywide.

13 370. Bank of America’s 2009 annual report stated that “[r]evenue,
14 net of interest expense on a fully taxable-equivalent (FTE) basis, rose to
15 \$120.9 billion, representing a 63% increase from \$74.0 billion in 2008,
16 reflecting in part the addition of Merrill Lynch and the full-year impact of
17 Countrywide.” Bank of America also reported that “[m]ortgage banking
18 income increased \$4.7 billion driven by higher production and servicing
19 income . . . primarily due to increased volume as a result of the full-year
20 impact of Countrywide” Insurance income also increased \$927 million
21 “due to the full-year impact of Countrywide’s property and casualty
22 businesses.”

23 371. Based on the above, Bank of America has “de facto” merged
24 with Countrywide Financial, consolidating and merging with the
25 Countrywide Defendants, and acquiring substantially all of the assets of all
26 the Countrywide Defendants. Bank of America is the successor in liability
27

1 to Countrywide, and is jointly and severally liable for the wrongful conduct
2 of the Countrywide Defendants alleged herein.

3 **XVI. WESTERN & SOUTHERN DID NOT KNOW AND COULD**
4 **NOT HAVE KNOWN OF ITS CLAIMS PRIOR TO APRIL 2009**

5 372. Western & Southern purchased its Certificates to hold them to
6 maturity for long term interest income. Four of the five Western & Southern
7 plaintiffs are insurance companies that are required to maintain certain levels
8 of loss reserves. Statutory accounting rules impact the types of investments
9 these insurers can hold in order to meet certain reserve requirements. As a
10 result, Western & Southern generally purchased only triple-A rated (or the
11 equivalent) mortgage-backed securities.

12 373. Thirty-three of Western & Southern's thirty-six tranches were
13 originally triple-A rated or the equivalent. Thirty-two of its thirty-six
14 tranches were Class A tranches located at the top of their respective
15 waterfalls.

16 374. Countrywide knew that Western & Southern would use the
17 statistical metrics it provided to develop a proprietary model used to perform
18 loan-level analysis to determine the likelihood that Western & Southern
19 would receive the cash flows due under its Countrywide Certificates (and
20 certificates of other issuers).

21 375. From at least 2007-2009, Countrywide (and following its
22 acquisition, Bank of America) also provided, directly or indirectly, loan
23 tapes for use by Western & Southern in its proprietary model to analyze cash
24 flows expected under its Countrywide Certificates.

25 376. When Lehman Brothers filed for bankruptcy in 2008, the
26 market for securitized assets of many types – mortgage loans, credit card
27 debt, auto loans, student loans (to name a few) – essentially stopped trading.

1 Western & Southern believed the cessation of trading was due to fears of a
2 cataclysmic collapse of the financial markets, and did not fairly reflect the
3 intrinsic value of the underlying Certificates. Additionally, third-party
4 pricing sources were not equipped to accurately determine idiosyncratic deal
5 risk. Accordingly, in fall 2008, Western & Southern developed its
6 proprietary “fair value pricing” model to determine the value of its
7 Countrywide Certificates.

8 377. Western & Southern used both its loan-level model and its fair
9 value pricing model through June 2009 in an ongoing effort to determine the
10 likelihood and magnitude of any losses it could expect to sustain with
11 respect to its Countrywide Certificates. In turn Western & Southern used
12 that analysis to determine whether or not to impair certain Countrywide
13 securities in its internal accounting as required under applicable insurance
14 regulations.

15 378. In fact, within a few months after the Lehman Brothers
16 bankruptcy (by early 2009), changes in accounting rules required Western &
17 Southern to analyze for impairment purposes its Countrywide Certificates
18 based on the expected cash flows to be received under those Certificates
19 discounted to present value using the same discount rate as the applicable
20 yield on such certificates at the time of their acquisition. By early 2009,
21 Western & Southern was aware of the impending accounting change (which
22 was adopted on September 14, 2009) and therefore analyzed its Countrywide
23 Certificates for impairment purposes using (i) expected cash flows on the
24 Countywide Certificates it owned which were determined by reference to
25 actual default rates on the collateral underlying the Countrywide Certificates
26 it owned, which were then (ii) discounted to present value using the yield on
27 the Countrywide Certificates at the time of purchase. To corroborate the

1 loss rates produced by its proprietary model, Western & Southern compared
2 its loss rates to those provided by JPMorgan (which generally had the
3 highest estimates of loss) and those reported by six to eight other sources
4 (including the rating agencies, RMBS dealers and other third parties). Using
5 such analysis, as of April 2009, Western & Southern had not impaired
6 twenty-seven out of thirty-six tranches it owned (meaning as a “buy and
7 hold” investor Western & Southern did not have notice that it would take
8 material losses on any Certificates it had not yet impaired).

9 379. Western & Southern was a buyer, predominantly, of triple-A
10 tranches of mortgage-backed securities involving almost exclusively Alt-A
11 and prime loans. With the aid of the analytical metrics provided by
12 Countrywide, Western & Southern purchased a limited number of
13 mezzanine tranches of Countrywide securitizations. By April 2009, it was
14 primarily the second lien certificates and mezzanine tranches which Western
15 & Southern had impaired (and thus was on notice of an expected loss).

16 380. The clear implication of the acts, and the impression made on
17 Western & Southern by Countrywide, was that Countrywide had carefully
18 and faithfully originated, assembled and analyzed their own mortgage loan
19 pools such that the performance of those pools would be consistent with the
20 statistical matrices presented to Western & Southern. Countrywide’s and
21 Bank of America’s fraudulent misrepresentation of loan characteristics to
22 Western & Southern constitutes fraudulent concealment of Western &
23 Southern’s claims.

24 381. On November 17, 2009, the National Association of Insurance
25 Commissioners (“NAIC”) announced that it had retained the giant fixed-
26 income asset manager PIMCO to develop a cash-flow projection valuation
27

1 model for determining appropriate risk based capital requirements for
2 residential mortgage-backed securities. The NAIC announcement stated:

3 “Creating this new assessment process is an important step
4 toward providing more transparency about these complex
5 securities,” said Roger Sevigny, NAIC President and New
6 Hampshire Insurance Commissioner. “This unique treatment of
7 residential mortgage-backed securities distinguishes the NAIC
8 as the only regulator to analyze these securities and require
9 capital based upon the expected loss amount for a particular
10 company.”

11 PIMCO will work with regulators to develop a set of price
12 ranges for designations one through six to be used by insurers
13 in their statutory financial statements and to calculate the risk-
14 based capital charges for each specific security they own.

15 These designations will apply only to year-end 2009 reporting.

16 382. Prior to PIMCO’s work, there was no market standard approach
17 sufficient to value the Certificates.

18 383. Up until no earlier than June 2009, Western & Southern had no
19 reason to expect that its highly-rated senior Certificates would not weather
20 what was then known about Countrywide’s faulty loan underwriting
21 practices.

22 384. Based on over-collateralization data reported in the Offering
23 Materials, Western & Southern could not suffer a net loss under twenty-six
24 of the thirty-six tranches until an aggregate loss of an unprecedented 4% or
25 more of loan principal. In fact, Western & Southern did not suffer any
26 diminution in interest or principal payments prior to February 2010 – and
27 only six of Western & Southern’s thirty-six tranches have suffered principal

1 or interest shortfalls to date (though it is now apparent that shortfalls will
2 expand dramatically in the near future).

3 385. Up until no earlier than June 2009, Western & Southern
4 reasonably concluded that its tranches would continue to provide interest
5 and principal payments, and had no reasonable basis to believe that
6 Countrywide was operating a criminal enterprise whose purpose was to
7 place original loans that borrowers could not repay, and then securitize those
8 loans for sale to investors such as Western & Southern. Information
9 concerning the criminal nature of the enterprise Mozilo founded and Bank of
10 America took over only began to become available to Western & Southern
11 in June 2009, when the SEC released internal Countrywide emails revealing
12 conscious disregard for the underwriting guidelines touted in the Offering
13 Materials and a deliberate scheme to originate toxic loans and sell them to
14 unsuspecting investors.

15 386. Western & Southern did not know, and could not have known,
16 that Countrywide's misstatements regarding mortgage assignments and
17 transfers of notes and loan files to the trusts were materially false and
18 misleading prior to learning the facts described in Section VII. And, as set
19 forth in Section VII, Defendants' massive conspiracy of robo-signing,
20 forgery, and outright perjury to hide the failure to assign mortgages and
21 transfer notes only began to surface in September 2010.

22 387. This robo-signing conspiracy served to fraudulently conceal the
23 existence of Western & Southern's claims. Similarly, Countrywide and
24 Bank of America's pervasive pattern of intimidation against internal
25 whistleblowers constitutes fraudulent concealment of Western & Southern's
26 claims.

1 388. Tolling applies to Western & Southern's 1933 Act claims and
2 Ohio Securities Act claims under *Vaccariello v. Smith & Nephew Richards,*
3 *Inc.*, 94 Ohio St. 3d 380 (Ohio 2002), and ORC § 2305.19.

4 389. Tolling applies to Western & Southern's 1933 Act claims under
5 *American Pipe Construction Co. v. Utah*, 414 U.S. 538 (1974).

6 390. On November 14, 2007, a class action was filed against various
7 Countrywide entities, former officers, and underwriters on behalf of all
8 investors who purchased or otherwise acquired certain mortgage-backed
9 securities that were issued, underwritten, or sold by Countrywide. *Luther v.*
10 *Countrywide Home Loans Servicing LP*, BC380698 (Cal. Super. Ct.
11 2007). The *Luther* complaint alleges claims under Sections 11, 12(a)(2), and
12 15 of the Securities Act of 1933.

13 391. Among the Countrywide offerings that Western & Southern
14 invested in, the following were included in the November 2007 *Luther* class
15 action: CWALT 2005-10CB, CWALT 2005-13CB, CWALT 2005-20CB,
16 CWALT 2005-26CB, CWALT 2005-28CB, CWALT 2005-30CB,
17 CWALT 2005-46CB, CWALT 2005-47CB, CWALT 2005-49CB, CWALT
18 2005-54CB, CWALT 2005-J1, CWALT 2006-7CB, CWALT 2006-14CB,
19 CWALT 2006-39CB, CWALT 2007-15CB. As of November 14, 2007,
20 Western & Southern was part of the defined class in *Luther* with respect to
21 these offerings.

22 392. On June 12, 2008, a different securities class action was filed
23 against Countrywide in California state court, *Washington State Plumbing &*
24 *Pipefitting Pension Trust v. Countrywide Financial Corp.*, BC392571 (Cal.
25 Super. Ct. 2008). Like *Luther*, this action alleged Section 11, 12(a)(2), and
26 15 claims against Countrywide, its former officers, and underwriters,
27

1 although *Washington State Plumbing* based its claims on different
2 securitizations than those in *Luther*.

3 393. Among the Countrywide offerings that Western & Southern
4 invested in, the following were included in the June 12, 2008 *Washington*
5 *State Plumbing* class action: CWALT 2005-28CB, CWALT 2005-30CB,
6 CWALT 2005-46CB, CWALT 2005-47CB, CWALT 2005-49CB, CWALT
7 2005-54CB, CWALT 2006-14CB, CWALT 2006-39CB, CWALT 2006-7
8 CB, CWALT 2007-15CB, CWALT 2007-16CB, CWALT 2007-17CB,
9 CWALT 2007-21CB, CWALT 2007-5CB, CWHL 2005-24, CWHL 2005-
10 25, CWHL 2005-J2, CWHL 2006-21, CWHL 2007-14, CWHL 2007-15,
11 CWHL 2007-5, CWL 2006-S8, CWL 2006-S9, CWL 2007-4, CWL 2007-
12 11, CWL 2007-S1, and CWL 2007-S2. As of June 12, 2008, Western &
13 Southern was part of the defined class in *Washington State Plumbing* with
14 respect to these offerings.

15 394. On September 9, 2008, the *Luther* complaint was amended to
16 add securitizations from *Washington State Plumbing*. The *Washington State*
17 *Plumbing* action was consolidated with the original *Luther* action, and a
18 consolidated and amended complaint was filed on October 16, 2008.

19 Western & Southern was included in the defined class in the
20 *Luther/Washington State Plumbing* consolidated complaint with respect to
21 its investments in the following Countrywide offerings: CWALT 2005-
22 10CB, CWALT 2005-13CB, CWALT 2005-20CB, CWALT 2005-26CB,
23 CWALT 2005-28CB, CWALT 2005-30CB, CWALT 2005-46CB, CWALT
24 2005-47CB, CWALT 2005-49CB, CWALT 2005-54CB, CWALT 2005-J1,
25 CWALT 2006-7CB, CWALT 2006-14CB, CWALT 2006-39CB, CWALT
26 2007-5CB, CWALT 2007-15CB, CWALT 2007-16CB, CWALT 2007-
27 17CB, CWALT 2007-21CB, CWHL 2005-24, CWHL 2005-25, CWHL

1 2005-J2, CWHL 2006-21, CWHL 2007-5, CWHL 2007-14, CWHL 2007-
2 15, CWL 2006-S8, CWL 2006-S9, CWL 2007-4, CWL 2007-11, CWL
3 2007-S1, and CWL 2007-S2.

4 395. The consolidated *Luther* action was subsequently dismissed on
5 jurisdictional grounds, but the action was then reinstated on appeal, and the
6 tolling afforded by *Luther/Washington State Plumbing* continues.

7 396. On January 14, 2010, *Maine State Retirement System v.*
8 *Countrywide Financial Corp.*, No. 10 Civ. 0302 (C.D. Cal. 2010) was filed.
9 Western & Southern was included in the defined class in the *Maine State*
10 complaint with respect to investments in the same Countrywide offerings
11 listed above with respect to *Luther/Washington State Plumbing*.

12 397. On November 4, 2010, the *Maine State* court held that the
13 named plaintiffs in that class action had standing to sue Countrywide only
14 with respect to eighty-one of the offerings in which the named plaintiffs
15 themselves invested. *Maine State Retirement System v. Countrywide*
16 *Financial Corp.*, No. 10 Civ. 0302 (C.D. Cal. Nov. 4, 2010). The Court
17 rejected the argument that the plaintiffs could represent class members who
18 brought in other Countrywide offerings, even if the offerings emanated from
19 a common registration statement.

20 398. On May 5, 2011, the *Maine State* court further ruled that the
21 named plaintiffs could bring claims only on behalf of holders of the same
22 tranche as held by the named plaintiffs. The net effect of the *Maine State*
23 rulings is to narrow the *Maine State* class and to exclude class members
24 whose investments in Countrywide mortgage-backed securities do not
25 overlap with those of the named plaintiffs.

26 **FIRST CAUSE OF ACTION**

27 **(Violation of Ohio Securities Act, ORC § 1707.41)**

1 399. Western & Southern realleges each allegation above as if fully
2 set forth herein.

3 400. This claim is brought under the Ohio Securities Act, ORC §
4 1707.41 against all Defendants. Defendants (a) offered securities for sale by
5 a written or printed circular, prospectus, or advertisement; (b) Western &
6 Southern purchased these securities relying on such written or printed
7 circular, prospectus, or advertisement; and (c) such written or printed
8 circular, prospectus, or advertisement contained untrue statements of
9 material fact and/or omitted material facts necessary to make the statements
10 made not misleading.

11 401. Defendants had knowledge of the untrue statements of material
12 fact and omissions of material facts set forth herein by virtue of the fact that,
13 at a minimum, Defendants failed to exercise reasonable diligence in
14 ascertaining their falsity.

15 402. As a result of Defendants' dissemination of materially false and
16 misleading information and their failure to disclose material facts, Western
17 & Southern was misled into believing that the Certificates were more
18 creditworthy investments than they actually were.

19 403. By virtue of the foregoing, Defendants violated ORC §
20 1707.41. As a direct and proximate result of Defendants' wrongful conduct,
21 Western & Southern has suffered damages in connection with the purchase
22 and subsequent decline in value of the Certificates and reduced interest or
23 principal payments

24 **SECOND CAUSE OF ACTION**

25 **(Violation of Ohio Securities Act, ORC § 1707.44(B)(4))**

26 404. Western & Southern realleges each allegation above as if fully
27 set forth herein.

1 405. This claim is brought under the Ohio Securities Act, ORC §
2 1707.44(B)(4), against all Defendants. Defendants made false
3 representations concerning material and relevant facts in the Offering
4 Materials for the purpose of selling securities within the State of Ohio.

5 406. Defendants had knowledge of the misrepresentations and
6 omissions of material facts set forth herein by virtue of the fact that, at a
7 minimum, Defendants failed to exercise reasonable diligence in ascertaining
8 their falsity.

9 407. By virtue of the foregoing, Defendants violated ORC §
10 1707.44(B)(4). As a direct and proximate result of Defendants' wrongful
11 conduct, Western & Southern has suffered damages in connection with the
12 purchase and subsequent decline in value of the Certificates and reduced
13 principal and/or interest payments.

14 **THIRD CAUSE OF ACTION**

15 **(Violation of Ohio Securities Act, ORC § 1707.44(J))**

16 408. Western & Southern realleges each allegation above as if fully
17 set forth herein.

18 409. This claim is brought under the Ohio Securities Act, ORC §
19 1707.44(J), against all Defendants. Defendants knowingly made or caused
20 to be made materially misleading false statements in the Offering Materials
21 concerning the value of the Certificates.

22 410. Defendants had knowledge of the misrepresentations and
23 omissions of material facts set forth herein by virtue of the fact that, at a
24 minimum, Defendants failed to exercise reasonable diligence in ascertaining
25 their falsity.

26 411. By virtue of the foregoing, Defendants have violated ORC §
27 1707.44(J). As a direct and proximate result of Defendants' wrongful

1 conduct, Western & Southern has suffered damages in connection with the
2 purchase and subsequent decline in value of the Certificates, and reduced
3 principal and/or interest payments.

4 **FOURTH CAUSE OF ACTION**

5 **(Violation of Ohio Securities Act, ORC § 1707.44(G))**

6 412. Western & Southern realleges each allegation above as if fully
7 set forth herein.

8 413. This claim is brought under the Ohio Securities Act, ORC §
9 1707.44(G), against all Defendants. Defendants knowingly engaged in acts
10 prohibited under the Ohio Securities Act in connection with the sale of the
11 Certificates to Western & Southern.

12 414. By virtue of the foregoing, Defendants violated ORC §
13 1707.44(G). As a direct and proximate result of Defendants' wrongful
14 conduct, Western & Southern has suffered damages in connection with the
15 purchase and subsequent decline in value of the Certificates, and reduced
16 principal and/or interest payments.

17 **FIFTH CAUSE OF ACTION**

18 **(Rescission pursuant to Ohio Securities Act, ORC § 1707.43)**

19 415. Western & Southern realleges each allegation above as if fully
20 set forth herein, including but not limited to the First, Second, Third and
21 Fourth Causes of Action herein.

22 416. This claim is brought under the Ohio Securities Act, ORC §
23 1707.43, against all Defendants. As set forth in the First, Second, Third and
24 Fourth Causes of Action herein, Defendants made sales in violation of the
25 Ohio Securities Act or participated in or aided the sellers in making such
26 sale.

1 417. Western & Southern is entitled to void and rescind the sale of
2 Certificates under ORC § 1707.43 and recover the full amount of
3 consideration paid for the Certificates and all taxable court costs.

4 **SIXTH CAUSE OF ACTION**

5 **(Violation of Ohio Corrupt Activities Act, ORC § 2923.31-2923.36)**

6 418. Western & Southern realleges each allegation above as if fully
7 set forth herein.

8 419. This claim is brought against Defendants Countrywide
9 Financial, Countrywide Home Loans, Countrywide Capital Markets,
10 Countrywide Securities, CWABS, CWALT, CWHEQ, CWMBS, Angelo
11 Mozilo, David Sambol, Bank of America, Bank of America, N.A., and BAC
12 Servicing (the “OCAAs Defendants”).

13 420. The OCAA Defendants were members of an enterprise that
14 included themselves and correspondent lenders belonging to Countrywide’s
15 correspondent lending program; underwriters of Countrywide mortgage-
16 backed securities; appraisers of real property securing Countrywide
17 mortgage loans; foreclosure law firms that promoted forgery and perjury in
18 attempting to cover up Countrywide’s faulty mortgage assignments and
19 loan-file transfers; PMI insurers that paid unlawful kickbacks to
20 Countrywide; and BNY, the trustee for the Countrywide mortgage-backed
21 securities trusts, which neglected its duty to put back to Countrywide
22 billions of dollars of loans that very plainly failed to meet applicable
23 underwriting standards.

24 421. The enterprise was an association-in-fact in which members
25 played distinct roles for the common purpose of profiting from originating
26 mortgage loans without regard for underwriting standards, including
27 borrower ability to repay and legitimate property appraisals; packaging those

1 loans into mortgage-backed securities, and then underwriting and selling
2 those securities through materially misleading and inaccurate Offering
3 Materials; and servicing mortgage loans by means of, among other improper
4 acts, “force-placed” insurance kickbacks, and grossly inflated and fraudulent
5 charges to defaulting borrowers.

6 422. As examples of the members’ distinct roles role in furtherance
7 of the enterprise, Countrywide Home Loans raised capital, originated and
8 funded mortgage loans, and participated in the preparation of Offering
9 Materials; Countrywide Capital directed the activities of Countrywide
10 Securities, which in turn managed the sale of Countrywide securities and
11 participated in the preparation of Offering Materials; CWALT, CWABS,
12 CWHEQ, and CWMBS deposited mortgage loans to their respective
13 mortgage-backed securities trusts; and Mozilo orchestrated Countrywide
14 Financial’s scheme to dominate the mortgage-lending market by abandoning
15 underwriting standards, creating and selling fraudulent mortgage-backed
16 securities, and engaging in various other wrongful acts.

17 423. Members of the enterprise and their employees were
18 compensated to perform illegal acts, and when employees of certain
19 enterprise members sought to rectify the enterprise’s wrongdoing, they were
20 fired or otherwise excluded from the enterprise.

21 424. The OCAA Defendants conducted or participated in, directly or
22 indirectly, the affairs of the enterprise through a pattern of corrupt activity
23 that included (1) multiple violations of the Ohio Securities Act, (2) multiple
24 acts of forgery or falsification in violation of ORC § 2913.31, (3) multiple
25 acts of perjury in violation of ORC § 2921.11, (4) multiple violations of
26 ORC § 2913.47 (Insurance Fraud), (5) multiple violations of 18 U.S.C. §
27 1344 (Bank Fraud), (6) multiple acts of mail and wire fraud in violation of

1 18 U.S.C. §§ 1341, 1343, (7) at least one violation of 18 U.S.C. § 1513(e)
2 (Retaliating Against a Witness, Victim, or an Informant), (8) multiple
3 violations of ORC § 2913.02 (Theft), (9) multiple violations of ORC §
4 2921.12 (Tampering with Evidence), and (10) multiple violations of ORC §
5 2913.42 (Tampering with Records), all as elsewhere alleged with
6 particularity herein.

7 425. The acts of the enterprise injured or threatened to injure
8 Western & Southern.

9 426. As a result of the foregoing, Western & Southern has suffered
10 damages according to proof and is entitled to recover treble damages and
11 attorneys' fees and expenses.

12 **SEVENTH CAUSE OF ACTION**

13 **(Ohio Negligent Misrepresentation)**

14 427. Western & Southern realleges each allegation above as if fully
15 set forth herein.

16 428. This is a claim for negligent misrepresentation against the
17 CWALT, CWABS, CWHEQ, CWMBS, Countrywide Securities,
18 Countrywide Home Loans, and Countrywide Financial (the "Negligent
19 Misrepresentation Defendants").

20 429. Because Countrywide arranged the creation and issuance of the
21 Certificates, and originated or acquired, underwrote, and serviced all of the
22 underlying mortgage loans, it had unique and special knowledge about the
23 loans. In particular, Countrywide had unique and special knowledge and
24 expertise regarding the quality of the underwriting of those loans, as well as
25 the servicing practices employed as to such loans.

26 430. Because Western & Southern could not evaluate the loan files
27 for the mortgage loans underlying its Certificates, and because Western &

1 Southern could not examine the underwriting quality or servicing practices
2 on a loan-by-loan basis, it was heavily reliant on Countrywide's unique and
3 special knowledge regarding the underlying mortgage loans in determining
4 whether to make each of its investments in Certificates.

5 431. Over the course of more than four years, Western & Southern
6 relied on Countrywide's unique and special knowledge regarding the quality
7 of the underlying Mortgage Loans and their underwriting when determining
8 whether to invest in the Offerings. This longstanding relationship, coupled
9 with Countrywide's unique and special knowledge about the underlying
10 loans, created a special relationship of trust, confidence, and dependence
11 between Countrywide and Western & Southern.

12 432. Countrywide was aware that Western & Southern was seeking
13 to compile a portfolio of conservative investments and that Western &
14 Southern relied on Countrywide's unique and special expertise and
15 experience, and depended upon Countrywide for accurate and truthful
16 information. Countrywide also knew that the facts regarding Countrywide's
17 compliance with its underwriting standards were exclusively within its
18 knowledge.

19 433. Based on its expertise, superior knowledge, and relationship
20 with Western & Southern, Countrywide owed a duty to Western & Southern
21 to provide complete, accurate, and timely information regarding the
22 Mortgage Loans and the Offerings. The Negligent Misrepresentation
23 Defendants breached their duty to provide such information to Western &
24 Southern.

25 434. The Negligent Misrepresentation Defendants likewise made
26 misrepresentations which they knew, or were negligent in not knowing at the
27 time to be false, in order to induce Western & Southern's investment in the

1 Offerings. At the time they made these misrepresentations, the Negligent
2 Misrepresentation Defendants knew, or at a minimum were negligent in not
3 knowing, that these statements were false, misleading, and incorrect. Such
4 information was known to the Negligent Misrepresentation Defendants but
5 not known or readily known to Western & Southern, and the Negligent
6 Misrepresentation Defendants knew that Western & Southern was acting in
7 reliance on misleading information.

8 435. Western & Southern reasonably relied on the information the
9 Negligent Misrepresentation Defendants did provide and was damaged as a
10 result of these misrepresentations. Had Western & Southern known the true
11 facts regarding Countrywide's underwriting practices and the quality of the
12 loans making up the securitizations, it would not have purchased the
13 Certificates.

14 436. The Negligent Misrepresentation Defendants' material
15 misrepresentations and omissions set forth above were made without any
16 reasonable ground for believing that the representations were true.

17 437. By reason of the foregoing, the Negligent Misrepresentation
18 Defendants are liable to Western & Southern for negligent
19 misrepresentation.

20 438. As a result of the foregoing, Western & Southern has suffered
21 damages according to proof.

22 **EIGHTH CAUSE OF ACTION**

23 **(Violation of Section 10(b) of the 1934 Act and Rule 10b-5)**

24 439. Western & Southern realleges each allegation above as if fully
25 set forth herein.

26 440. This claim is brought under Section 10(b) of the 1934 Act, 15
27 U.S.C. § 78j(b) and Rule 10b-5 promulgated thereunder by the SEC, 17

1 C.F.R. § 240.10b-5, against Countrywide Home Loans, Countrywide
2 Securities, CWALT, CWABS, CWHEQ, CWMBS, and the Bank of
3 America Defendants as Countrywide's successors (the "Section 10(b)
4 Defendants"). The Section 10(b) Defendants (a) employed devices, schemes,
5 and artifices to defraud; (b) made untrue statements of material fact and/or
6 omitted material facts necessary to make the statements made not
7 misleading; and (c) engaged in acts, practices, and a course of business
8 which operated as a fraud and deceit upon Western & Southern, in violation
9 of Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder.

10 441. The Section 10(b) Defendants, individually and in concert,
11 directly and indirectly, by the use, means or instrumentalities of interstate
12 commerce and/or of the mails, engaged and participated in a continuous
13 course of conduct to conceal non-public, adverse material information about
14 the Certificates from Western & Southern.

15 442. The Section 10(b) Defendants each had actual knowledge of the
16 misrepresentations and omissions of material facts set forth herein, or acted
17 with reckless disregard for the truth by failing to ascertain and to disclose
18 such facts even though such facts were available to them, or deliberately
19 refrained from taking steps necessary to discover whether the material facts
20 were false or misleading.

21 443. As a result of the Section 10(b) Defendants' dissemination of
22 materially false and misleading information and their failure to disclose
23 material facts, Western & Southern was misled into believing that the
24 Certificates were more creditworthy investments than they actually were.

25 444. Western & Southern purchased the Certificates without
26 knowing that the Section 10(b) Defendants had misstated or omitted material
27 facts about the Securitizations, including without limitation misstatements

1 and omissions regarding their underwriting practices and quality of the loans
2 making up the securitizations.

3 445. In purchasing the Certificates, Western & Southern relied
4 directly or indirectly on false and misleading statements made by the Section
5 10(b) Defendants, and/or an absence of material adverse information that was
6 known to the Section 10(b) Defendants or recklessly disregarded by them but
7 not disclosed in Countrywide's public statements or its communications
8 with Western & Southern. Western & Southern was damaged as a result of
9 its reliance on the Section 10(b) Defendants' false statements and
10 misrepresentations and omissions of material facts.

11 446. At the time of the Section 10(b) Defendants' false statements,
12 misrepresentations and omissions, Western & Southern was ignorant of their
13 falsity and believed them to be true. Western & Southern would not have
14 purchased or otherwise acquired the Certificates had it known the truth about
15 the matters discussed above.

16 447. Western & Southern is filing this action within two years after
17 discovery of the facts constituting the violation, including facts establishing
18 scienter and other elements of Western & Southern's claim, and within 5
19 years after the violations with respect to most of Western & Southern's
20 investments.

21 448. By virtue of the foregoing, the Section 10(b) Defendants have
22 violated § 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder.

23 449. As a direct and proximate result of the Section 10(b)
24 Defendants' wrongful conduct, Western & Southern has suffered damages in
25 connection with the purchase and subsequent decline in value of the
26 Certificates and in connection with reduced interest payments on certain
27 Certificates.

NINTH CAUSE OF ACTION

(Violation of Section 20(a) of the 1934 Act)

450. Western & Southern realleges each allegation above as if fully set forth herein.

451. Each of the Section 10(b) Defendants is liable as a direct participant and primary violator with respect to the wrongdoing discussed herein. Countrywide Financial, Mozilo and Sambol (the “Section 20(a) Defendants”), by reason of their status as parent company and senior executive officers and directors of Countrywide, directly or indirectly controlled the conduct of Countrywide’s business and its representations to Western & Southern, within the meaning of § 20(a) of the 1934 Act. The Section 20(a) Defendants directly or indirectly controlled the content of the Offering Materials related to Western & Southern’s investments in the Securities within the meaning of § 20(a) of the 1934 Act. Therefore the Section 20(a) Defendants are jointly and severally liable for Countrywide’s fraud, as alleged herein.

452. The Section 20(a) Defendants controlled and had the authority to control the content of certain of Countrywide’s documents, including the Certificates’ Offering Materials. Because of their close involvement in the everyday activities of the Company, and because of their wide-ranging supervisory authority, the Section 20(a) Defendants reviewed or had the opportunity to review those documents prior to their issuance and therefore knew or should have known that those documents contained misrepresentations. The Section 20(a) Defendants reviewed or could have reviewed these documents prior to their issuance, or could have prevented their issuance or caused them to be corrected.

1 453. The Section 20(a) Defendants knew or recklessly disregarded
2 the fact that Countrywide's representations were materially false and
3 misleading and/or omitted material facts when made. In so doing, the
4 Section 20(a) Defendants did not act in good faith.

5 454. By virtue of their high-level positions and their participation in
6 and awareness of Countrywide's operations and public statements, the
7 Section 20(a) Defendants were able to and did influence and control
8 Countrywide's decision-making, including controlling the content and
9 dissemination of the documents that Plaintiffs contend contained materially
10 false and misleading information and on which Plaintiffs relied.

11 455. The Section 20(a) Defendants had the power to control or
12 influence the particular transactions giving rise to the securities violations
13 alleged herein.

14 456. As set forth above, the Section 10(b) Defendants each violated §
15 10(b) of the 1934 Act and Rule 10b-5, thereunder, by their acts and
16 omissions as alleged herein. By virtue of their positions as controlling
17 persons, the Section 20(a) Defendants are also liable pursuant to § 20(a) of
18 the 1934 Act.

19 457. As a direct and proximate result of Defendants' wrongful
20 conduct, including the wrongful conduct of Countrywide Financial, Mozilo
21 and Sambol, Western & Southern suffered damages in connection with its
22 purchase of mortgage-backed securities from Countrywide.

23 **TENTH CAUSE OF ACTION**

24 **(Violation of Section 11 of the 1933 Act)**

25 458. Western & Southern realleges each allegation above as if fully
26 set forth herein, except to the extent that Western & Southern expressly
27 excludes from this cause of action any allegation that could be construed as

1 alleging fraud or intentional or reckless conduct. This cause of action
2 specifically excludes the allegations as to Defendants' scienter.

3 459. This cause of action is based solely on claims of strict liability
4 or negligence under the 1933 Act. This count is predicated upon the Section
5 11 Defendants' strict liability for making untrue and materially misleading
6 statements in the Offering Materials.

7 460. This claim is brought under Section 11 of the 1933 Act, 15
8 U.S.C. §77k ("Section 11"), against Countrywide Securities, the Depositors,
9 and the Signatories (Eric Sieracki, Ranjit Kripalani, Stanford Kurland, David
10 A. Spector, N. Joshua Adler, and Jennifer Sandefur) (all together, the
11 "Section 11 Defendants") arising from Western & Southern's purchases of
12 the Certificates.

13 461. Each of Western & Southern's purchases of the Certificates was
14 made pursuant to the false and misleading Offering Materials, including the
15 Registration Statements.

16 462. The Offering Materials for the Offerings were materially
17 untrue, misleading, contained untrue statements of material facts, and
18 omitted to state material facts required to be stated therein or necessary to
19 make the statements therein not misleading. At the time it obtained the
20 Certificates, Western & Southern did not know of the facts concerning the
21 untrue and misleading statements and omissions alleged herein.

22 463. The Section 11 Defendants caused to be issued and
23 disseminated, directed other parties to disseminate at the time of the filing of
24 the Offering Materials, and/or participated in the issuance and dissemination
25 to Western & Southern of materially untrue statements of facts and
26 omissions of material facts, which were contained in the Offering Materials.

1 464. The Section 11 Defendants are strictly liable to Western &
2 Southern for the materially untrue statements and omissions in the Offering
3 Materials under Section 11. The Depositors are liable as issuers of the
4 Certificates. Countrywide Financial is liable as an issuer, among other
5 grounds, because it formed the Depositors as limited purpose finance
6 subsidiaries for the purpose of issuing the Certificates and subsequently
7 issued the Certificates via the Depositors.

8 465. Defendant Countrywide Securities is liable for its role as the
9 lead underwriter of both Securitizations, in accordance with Section 11
10 (a)(5) of the 1933 Act, 15 U.S.C. §77k(a)(5).

11 466. The Signatories are liable for signing the Registration
12 Statements, in accordance with Section 11(a)(l) of the 1933 Act, 15 U.S.C. §
13 77k(a)(l).

14 467. The Section 11 Defendants owed to Western & Southern a duty
15 to make a reasonable and diligent investigation of the statements contained
16 in the Offering Materials at the time they became effective to ensure that
17 such statements were true and correct and that there was no omission of
18 material facts required to be stated in order to make the statements contained
19 therein not misleading. The Section 11 Defendants failed to exercise such
20 due diligence by failing to conduct a reasonable investigation.

21 468. Western & Southern has sustained damages measured by the
22 difference between the price Western & Southern paid for the certificates
23 and (1) the value of the Certificates at the time this suit is brought, or (2) the
24 price at which Western & Southern sold the Certificates in the market prior
25 to the time suit is brought. Western & Southern's Certificates lost
26 substantial market value subsequent to and due to the materially untrue
27

1 statements of facts and omissions of material facts in the Offering Materials
2 alleged herein.

3 469. By reason of the conduct herein alleged, the Section 11
4 Defendants violated Section 11 of the 1933 Act and are jointly and severally
5 liable for their wrongdoing. By virtue of the foregoing, Western & Southern
6 is entitled to damages from each of the Section 11 Defendants.

7 **ELEVENTH CAUSE OF ACTION**

8 **(Violation of Section 12(a)(2) of the 1933 Act)**

9 470. Western & Southern realleges each allegation above as if fully
10 set forth herein, except to the extent that Western & Southern expressly
11 excludes from this cause of action any allegation that could be construed as
12 alleging fraud or intentional or reckless conduct. This cause of action
13 specifically excludes the allegations as to Defendants' scienter.

14 471. This cause of action is based solely on claims of strict liability
15 or negligence under the 1933 Act. This is a claim brought under Section
16 12(a)(2) of the 1933 Act, 15 U.S.C. §77I(a)(2) ("Section 12(a)(2)"), against
17 Countrywide Securities, the Depositors, and the Bank of America
18 Defendants as the Countrywide Defendants' successors (collectively the
19 "Section 12(a)(2) Defendants") arising from Western & Southern's
20 purchases of the Certificates.

21 472. The Section 12(a)(2) Defendants offered and sold the
22 Certificates to Western & Southern by means of the defective Offering
23 Materials, including the Prospectuses and Prospectus Supplements, which
24 contained materially untrue statements of facts and omitted to state material
25 facts necessary to make the statements, in the light of the circumstances
26 under which they were made, not misleading. Western & Southern
27 purchased the Certificates directly from the Section 12(a)(2) Defendants,

1 who both transferred title to Western & Southern and who solicited Western
2 & Southern for financial gain.

3 473. The Section 12(a)(2) Defendants offered the Certificates for
4 sale, sold them, and distributed them by the use of means or instruments of
5 transportation and communication in interstate commerce.

6 474. The Section 12(a)(2) Defendants owed to Western & Southern
7 the duty to make a reasonable and diligent investigation of the statements
8 contained in the Offering Materials, to ensure that such statements were true,
9 and to ensure that there was no omission to state a material fact required to
10 be stated in order to make the statements contained therein not misleading.
11 The Section 12(a)(2) Defendants failed to exercise such reasonable care.

12 475. The Section 12(a)(2) Defendants knew, or in the exercise of
13 reasonable care should have known, that the Offering Materials contained
14 materially untrue statements of facts and omissions of material facts, as set
15 forth above, at the time of the Offerings. Conversely, Western & Southern
16 did not know, nor in the exercise of reasonable diligence could it have
17 known, of the untruths and omissions contained in the Offering Materials at
18 the time it purchased the Certificates.

19 476. Western & Southern sustained material damages in connection
20 with its investments in the Securitizations and accordingly has the right to
21 rescind and recover the consideration paid for the Certificates, with interest
22 thereon, in exchange for tendering the Certificates. Western & Southern
23 hereby tenders its Certificates and demands rescission.

24 **TWELFTH CAUSE OF ACTION**

25 **(Violation of Section 15 of the 1933 Act)**

26 477. Western & Southern realleges each allegation above as if fully
27 set forth herein.

1 478. This is a claim brought under Section 15 of the 1933 Act, 15
2 U.S.C. §770 (“Section 15”), against Countrywide Financial, Countrywide
3 Home Loans, Countrywide Capital Markets, Sambol and against the Bank of
4 America Defendants as Countrywide Financial’s successors (the “Section 15
5 Defendants”) for controlling-person liability with regard to the Section 11
6 and Section 12(a)(2) causes of actions set forth above. The Section 15
7 Defendants were named as defendants in the Third Cause of Action in
8 *Luther*, for “Violation of Section 15 of the Securities Act Against
9 Countrywide Financial, Countrywide Securities, Countrywide Capital
10 Markets and Countrywide Home Loans.”

11 479. The Section 15 Defendants are controlling persons within the
12 meaning of Section 15 by virtue of their actual power over, control of,
13 ownership of, and/or directorship of the Section 11 Defendants and the
14 Section 12(a)(2) Defendants, defined above, at the time of the wrongs
15 alleged herein and as set forth herein, including their control over the content
16 of the Offering Materials.

17 480. The Section 11 and 12(a)(2) Defendants acted negligently and
18 without reasonable care regarding the accuracy of the information contained
19 in and incorporated by reference in the Offering Materials. The Section 11
20 and 12(a)(2) Defendants lacked reasonable grounds to believe that such
21 information was accurate and complete in all material respects.

22 481. The Section 15 Defendants had power and influence over the
23 Section 11 and 12(a)(2) Defendants and exercised the same to cause those
24 Defendants to engage in the acts described herein. By virtue of their control,
25 ownership, offices, directorship and specific acts, the Section 15 Defendants
26 each had the power to influence and control, and did influence and control,
27 directly or indirectly, the decision making of the Section 11 and 12(a)(2)

1 Defendants named herein, including controlling the content of the Offering
2 Materials.

3 482. The Section 15 Defendants' control, ownership, and position
4 made them privy to and provided them with actual knowledge of the
5 material facts concealed from Western & Southern.

6 483. None of the Defendants named herein conducted a reasonable
7 investigation or possessed reasonable grounds for the belief that the
8 statements contained in the Offering Materials were true, were without
9 omissions of any material fact and were not misleading.

10 484. Western & Southern did not know, nor in the exercise of
11 reasonable diligence could it have known, of the untruths and omissions
12 contained in the Offering Materials at the time it purchased the Certificates.

13 485. By virtue of the conduct alleged herein, the Section 15
14 Defendants are liable for the aforesaid wrongful conduct, jointly and
15 severally with – and to the same extent as – the entities they controlled for
16 the violations of Sections 11 and 12(a)(2) by the controlled entities.

17 **THIRTEENTH CAUSE OF ACTION**

18 **(Successor and Vicarious Liability)**

19 486. Western & Southern realleges each allegation above as if fully
20 set forth herein.

21 487. The Bank of America Defendants are liable for Countrywide's
22 wrongdoing, in its entirety, under common law, because Bank of America
23 and Countrywide merged or consolidated, because Bank of America has
24 expressly or impliedly assumed Countrywide's tort liabilities, and because
25 the Bank of America Defendants are a mere continuation of the Countrywide
26 Defendants.

27 **FOURTEENTH CAUSE OF ACTION**

(Ohio Common Law Fraud)

488. Western & Southern realleges each allegation above as if fully set forth herein.

489. This claim is brought against Countrywide Financial, Countrywide Home Loans, Countrywide Securities, and the Depositors (the “Common-Law Fraud Defendants”), and the Bank of America Defendants as Countrywide’s successors.

490. The material representations set forth above were fraudulent, and the Common-Law Fraud Defendants’ representations fraudulently omitted material statements of fact.

491. Each of the Common-Law Fraud Defendants knew their representations and omissions were false and/or misleading at the time they were made. Each of the Common-Law Fraud Defendants made the misleading statements with intent to defraud Western & Southern.

492. Western & Southern justifiably relied on the Common-Law Fraud Defendants’ false representations and misleading omissions.

493. Had Western & Southern known the true facts regarding the Common-Law Fraud Defendants’ underwriting practices and quality of the loans making up the securitizations, it would not have purchased the Certificates.

494. As a result of the Common-Law Fraud Defendants’ false and misleading statements and omissions, as alleged herein, Western & Southern has suffered damages according to proof. The Countrywide Defendants are liable to Western & Southern for common-law fraud, and the Bank of America Defendants are liable as their successors.

SEVENTEENTH CAUSE OF ACTION

(Civil Conspiracy)

1 495. Western & Southern realleges each allegation above as if fully
2 set forth herein.

3 496. As set forth herein, Defendants violated the Ohio Securities
4 Act, the federal Securities Act, the Ohio Corrupt Practices Act and
5 committed fraud.

6 497. The Defendants formed an association in fact of entities that
7 conspired to underwrite and purchase fraudulently and improperly
8 underwritten loans, to package those loans for resale, and to fraudulently
9 service such loans through use of fraudulent and forged documents in
10 foreclosures and overcharges to borrowers for insurance and other services.

11 498. As set out above, each Defendant committed overt acts in
12 furtherance of the conspiracy with malicious intent.

13 499. As a result of the foregoing, Western & Southern has suffered
14 damages according to proof.

15 **PRAYER FOR RELIEF**

16 WHEREFORE Western & Southern prays for relief as follows:

17 An award of damages against Defendants in favor of Western &
18 Southern against all Defendants, jointly and severally, for all damages
19 sustained as a result of Defendants' wrongdoing, in an amount to be proven
20 at trial, but including at a minimum:

21 a. Rescission and recovery of the consideration paid for the
22 Certificates, with interest thereon;

23 b. Western & Southern's monetary losses, including loss of
24 market value and loss of principal and interest payments, on all claims other
25 than Western & Southern's Section 12(a)(2) claim or other claims for
26 rescission;

27 c. Attorneys' fees and costs;

- d. Treble damages;
- e. Punitive damages;
- f. Prejudgment interest at the maximum legal rate; and
- g. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs hereby demand a trial by jury on all issues triable by jury.

Dated: November 7, 2011

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